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# THE Insurance Corporations Act, 1892.

WITH  
PRACTICAL NOTES AND APPENDICES.

## APPENDIX A.

ACTS SUBSIDIARY TO THE INSURANCE CORPORATIONS ACT, WITH ANNOTATIONS.

- 1.—R.S.O., 1887, c. 136, (as amended or affected by subsequent enactments.) An Act to secure to Wives and Children the Benefit of Life Insurance.
- 2.—R.S.O., 1887, c. 167, sections 114-119, STATUTORY CONDITIONS OF FIRE POLICIES, and provisions relating thereto, together with subsequent auxiliary or declaratory enactments.

## APPENDIX B.

DEPARTMENTAL FORMS, WITH DIRECTIONS AS TO THEIR USE, FOR PURPOSES OF THE INSURANCE CORPORATIONS ACT.

## APPENDIX C.

FORMS OF INSURANCE CONTRACTS, ILLUSTRATIVE OF THE PROVISIONS OF THE ACT.

BY

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WITH AN

## INTRODUCTORY CHAPTER

BY

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*Barrister-at-Law; Inspector of Insurance and Registrar of Friendly Societies for the Province of Ontario.*

To which is now added as APPENDIX D. 56 VIC., CHAP. 32,  
(An Act respecting the Insurance Law.)

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TORONTO :

THE CARSWELL COMPANY, (LTD.)

1893.

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Entered according to Act of Parliament of Canada, in the Office of the Minister of  
Agriculture, by WILLIAM HOWARD HUNTER, in the year one thousand eight  
hundred and ninety.

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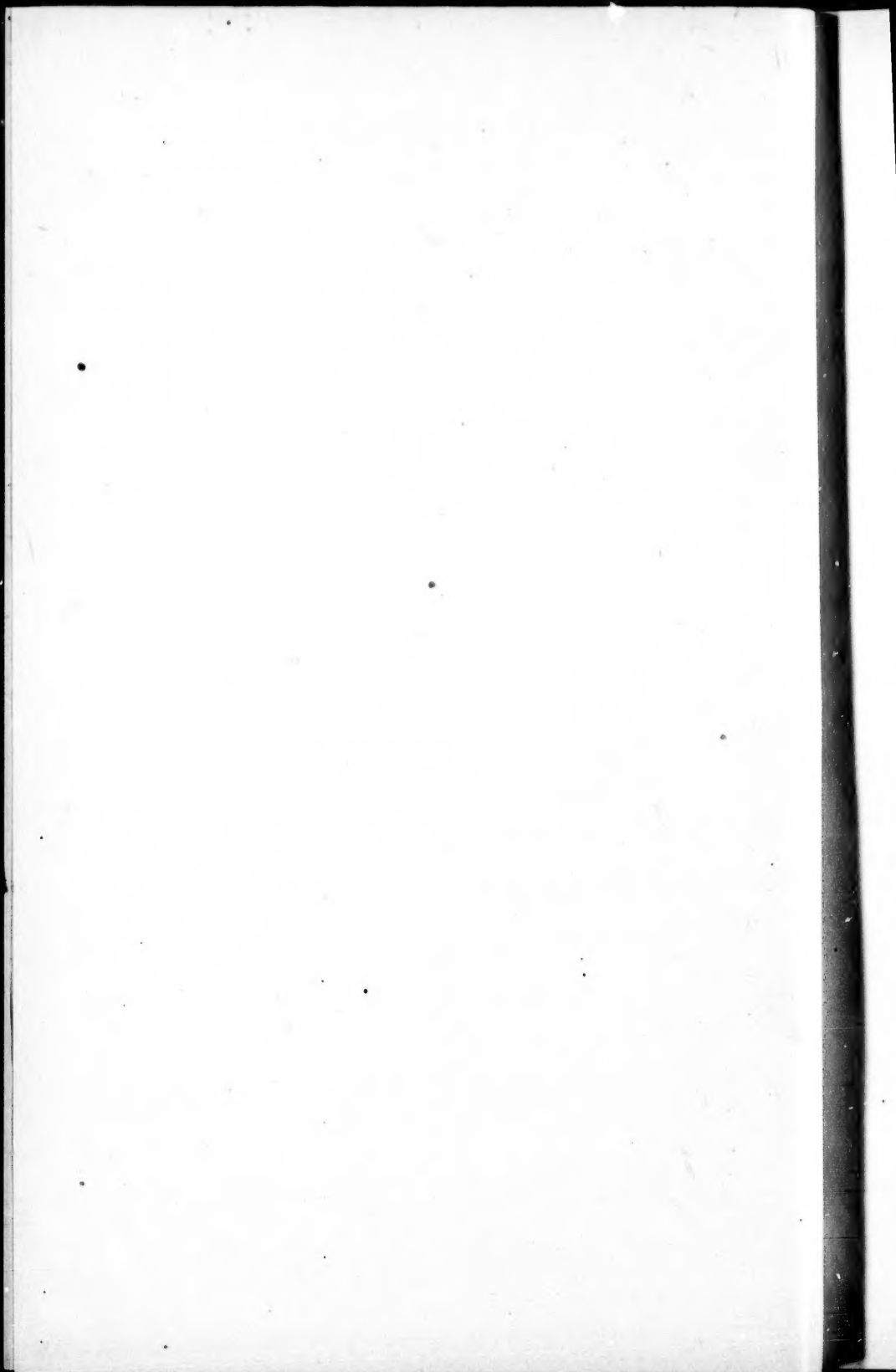
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McPhail v. Manufacturers' Life Insurance  
Co.—D. O. Cameron and W. T. J. Lee for  
plaintiffs. W. M. Eddell and H. E. Rose for  
defendants. Action to recover moneys under  
a cancelled life insurance policy. Judgment  
reserved.

## PREFACE.

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By the skilful piloting of the Honourable J. M. Gibson, Q.C., Provincial Secretary, the *Insurance Corporations Bill* was last session carried through the Legislature of Ontario, and is now law.

This enactment, which is one of the most important and comprehensive measures ever passed by the Provincial Legislature, removes many long-standing anomalies in our Insurance Law, and establishes general equitable principles by which all contracts of insurance,—whether made by Friendly Societies, or by Insurance Companies—  
—are hereafter to be interpreted and governed.

In Life and Accident Insurance, the doctrine of insurable interest is now revised in accordance with the exigencies of modern life. The contracts of minors who insure their lives for their own benefit or for the benefit of dependent members of their family, are recognized and protected. Parents are now given an insurable interest in the lives of their children, by virtue of the mere parental relation, and do not require to show a pecuniary interest; but, in the case of very young children, such contracts are for limited amounts, and are otherwise safeguarded. "Rebating" and discrimination in contracts are forbidden under penalties; and on the Insurance Agents' Register all life and accident insurance agents must obtain registration. In the present volume all the statute law in force relating to life and accident insurance

will be found, with notes of decisions under the respective sections. In Appendix A will be found the important Act, R. S. O. 1887, c. 136 (*an Act to secure to Wives and Children the benefit of Life Insurance*), carefully noted up so as to show how the Act has been amended or affected by subsequent enactments, and how various provisions have been construed by our Courts. This Act, it must be remembered, now governs the contracts of Friendly Societies as well as of Insurance Companies.

In Accident Insurance there have of late years been severe strictures from the Bench upon the character of the contracts imposed upon the public. The new Act places a substantial check upon unreasonable conditions and stipulations. The effect of the decision of the full Bench in *Reg. v. Stapleton* (1892), 21 O. R. 679, is to make much of the insurance transacted by Benefit Societies "Accident" insurance, and so to bring their contracts within the range of the above restrictions.

The insurance certificates of Friendly Societies have sometimes occasioned the greatest difficulty by their vagueness notwithstanding their contractual form. They are now to be reduced to the form either of a plain and explicit policy, or the relevant sections and articles of the society's constitution and rules are to be clearly indicated on the face of the instrument; and the same principles of construction are to be applied to such certificates as to the ordinary policies of life,

accident and casualty insurance. The kind of insurance that may be undertaken by Friendly Societies is now strictly defined. The amount payable under the certificate, the time within which claims become payable, the conditions of forfeiture and suspension are now all matters of statutory regulation.

In the courts of the United States the contracts of these societies have long received the attention which their great public importance demands. Scattered throughout the vast library of American reports will be found decisions of the utmost practical value in directing executive officers as to their powers and duties, or in directing members as to their rights and remedies. From this storehouse of decisions the author has, in the notes, selected such leading cases as will, he trusts, be found of essential service in the practical management of all our benefit societies.

In Fire Insurance the relative rights and duties of the insurer and assured on the occasion of a loss are now legally defined and the perplexing questions that have lately arisen have been dealt with in the new Act. The great importance of the Statutory Conditions has obtained for them a place in Appendix A,—where will be found the conditions actually now in force, and the provisions relating to them, together with subsequent auxiliary or declaratory enactments.

The legal status of all insurance corporations or companies doing business in the Province is now made matter of registry in the Provincial



Department; so that not only the right of a given corporation to undertake contracts of insurance can be ascertained, but the remedies of claimants under policies can be pursued within the Province in the Provincial Courts. The proceedings to obtain registry and the material required to support the application have, in the present volume, been explained in a practical manner, and the forms prescribed by the Department of Insurance are added in Appendix B.

From decisions of the Registry Officer there is an appeal to the Divisional Court of the High Court. The provisions relating to the powers and duties of the Registry Officer have been dealt with fully, and the effects of his decision discussed.

For corporations within the legislative authority of the Province a new procedure in winding up has been provided. This branch of the subject has been copiously illustrated.

In preparing these annotations the author has had access to his father's valuable manuscript commentary on our insurance laws, which as Government Inspector of Insurance he has long had so large a share in moulding. For the very complete analytical index the author is indebted to his brother, Mr. A. T. Hunter, L.L.B.

W. H. HUNTER.

Equity Chambers,  
Toronto, 18th June, 1892.

## CONTENTS.

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	Page.
Preface .....	iii.
Table of cases .....	xi.
Introductory chapter .....	xxiii.
Analysis of Act, showing what corporations can and what cannot transact insurance in Ontario .....	lxiv.
Summary of provisions .....	1

### INSURANCE CORPORATIONS ACT.

Definitions and Interpretation, s. 2 .....	9
None but registered corporations to transact insurance, s. 3....	70
The corporation registers, s. 4 (1) (2) .....	73
Corporations not entitled to register as friendly societies, s. 4 (2)..	78
Licensed companies, ss. 5-7.....	97
Societies incorporated under the Benevolent Societies' Acts, s. 8..	111
Societies incorporated by Acts of Parliament of Canada, s. 9 ....	141
Status of foreign corporations .....	156
Foreign Friendly Societies, s. 10 .....	158
The Registrar of Friendly Societies, s. 11 .....	164
Proceedings to obtain registry, ss. 12-17 .....	165
The entries on the registers, s. 18.....	180
Renewal of registry, ss. 19-21.....	183
Friendly societies not permitted to make deposit, s. 22 .....	187
Change of name, s. 24 .....	191
Revocation of registry, s. 25 .....	193
Official notice and certificates, s. 26 .....	195
Unauthorized insurance, penalties, s. 28.....	199
The books of account and audit, ss. 28-32 .....	207
Conditions in policies, s. 33 (1-3) .....	227
Entry after loss, s. 33 (4).....	246
Error in statement of age, s. 34.....	250
Insurable interest, s. 35 .....	256
Accident insurance, s. 36.....	267
Insurance for benefit of wives and children, s. 37.....	274
Discrimination between assured, s. 38.....	277
Liability of members of society, s. 39 .....	287
Forfeiture of benefits, s. 40 (1) .....	290
Re-instatement, s. 40 (1) .....	301
Amount payable under contract, ss. 41, 42.....	305
Notices to corporations, s. 43.....	314

	PAGE.
Default in payment of claim, s. 44 .....	315
Registrar and books of society, s. 45 .....	317
Annual statements, ss. 47, 48 .....	321
Suspension or cancellation of registry, ss. 49-51 .....	325
Appointment and duties of receivers, ss. 52-61 .....	335
Tariff of fees, s. 62 .....	351
Provisions amended or repealed, s. 63 .....	355
General summary of Acts amended or repealed by <i>The Insurance Corporations Act</i> .....	357

## APPENDIX A.

## Subsidiary Acts with annotations—

1. R. S. O. 1887, c. 136, being an Act to secure to wives and children the benefit of life insurance..... 361
2. R. S. O. 1887, c. 167, ss. 114-119, statutory conditions of fire policies and provisions relating thereto, together with subsequent auxiliary or declaratory enactments.. 372

## APPENDIX B.

*Departmental Forms to be used under The Insurance Corporations Act.*

## No.

1. Application for registry as an insurance licensee ..... 389
2. Treasury receipt for application fee.... 397
3. Power of attorney..... 398
4. Treasury receipt for certificate fee..... 401
5. Certificate of registry as insurance company.. 402
6. Treasury receipt preliminary to registry as Provincial licensee 403
7. Provincial license..... 404
8. Annual document of authority issued to Dominion licensees.. 405
9. Application for registry as a friendly society..... 410
10. Form of affidavit verifying financial statement ..... 405
11. Change of corporate name, direction, ..... 417
12. Notice in *Ontario Gazette*, re change of name.... 417
13. Certificate of registry as friendly society..... 418
14. Receipt for agents' license fee..... 419
15. Application for Registry as insurance agent .... 420
16. Recommendation for registry..... 421
17. Insurance agents' certificate of registry..... 421
18. Notice to state objections..... 422

APPENDIX C.

*Forms of Insurance Contracts illustrative of the Provisions of the Act.*

	PAGE.
Reducible term endowment policy—	
The Peoples' Life Insurance Co .....	424
Life with profits—	
The Canada Life Assurance Co.....	428
Semi-Tontine—	
The North American Life Assurance Co .....	431
Tontine—	
The Manufacturers' Life Insurance Co .....	434
Accident Policies—	
The Travelers Insurance Co.....	437
The Accident Insurance Co. of North America.....	339
The Manufacturers' Accident Insurance Co.....	542
Friendly Society Contracts—	
Sons of England Benevolent Society.....	445
Ancient Order of Foresters.....	447
Ancient Order of United Workmen.....	448
Independent Order of Foresters.....	451
Royal Arcanum.....	453
Order of Canadian Home Circles.....	455

PAGE.  
315  
317  
321  
325  
335  
351  
355  
  
357  
  
  
361  
372  
  
ons Act.  
  
339  
397  
398  
401  
402  
403  
404  
405  
410  
405  
417  
417  
418  
419  
420  
421  
421  
422

## ERRATA.

Page 20, line 17, for 'is' read 'are'; page 28, line 14, for 'corporation' read 'corporations'; page 49, line 3, for 'amount' read 'account'; page 70, line 17, after 'R. S. O. 1887,' insert 'c. 167'; page 107, line 16, after 'R. S. C.' insert 'c.'; page 190, line 3, for 'c. 162,' read 'c. 167'; page 200, line 29, for 'section 39' read 'section 38'; page 212, line 20, for 'reasonable or proper' read 'reasonable and proper'; page 237, line 18, for 'Brown' read 'Benson'; page 239, line 6, for 'Md.' read 'Ind.'; page 245, line 9, for 'Md.' read 'Ind.'; line 14 for '44 Q. B.' read '44 U. C. Q. B.'; page 259, line 32, for 'Md.' read 'Ind.'; page 277, line 3, for 'section 4 of the said Act is' read 'sections 3 and 4 of the said Act are'; page 292, line 23, for 'Md.' read 'Ind.'; line 27, for '36' read '368'; page 323, line 16, for '28 Gr.' read '25 Gr.'; page 337, line 18, for '55 (9)' read '56 (9)'; page 371, line 7, for '35' read '133.'

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## TABLE OF CASES.

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Ætna  
Ætna  
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Ætna  
Agne  
29  
Alkins  
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Americ  
9  
Americ  
(18  
24  
Americ  
W  
Americ  
M  
24  
Anders  
Anders  
Ca  
Andre  
Ashbu  
69  
Ashfor  
43  
Ashley  
25  
Atty.-G  
Or  
Attorn  
A  
Augus  
Austin  
Avery  
11



## TABLE OF CASES.

*The number following the colon denotes the page of this volume on which the case is cited; e.g. "Ætna Co. v. Davey, etc.: 245."*

### A.

Ætna Co. v. Davey, 123 U. S. 739: 245.  
 Ætna Co. v. Deming, 123 Ind. 384: 245.  
 Ætna Co. v. France, 91 U. S. 510, 94 U. S. 561: 243, 259.  
 Ætna Life Ins. Co. v. Hanna, 20 Ins. L. J. 977: 304.  
 Agnew v. A. O. U. W., 17 Mo. App. 254: 291, 298.  
 Alkins v. Jupe, L. R. 2 C. P. D. 375: lii, 72, 264.  
 American Ins. Co. v. Pieul, S. C. Pa. 9 Penn. 520: 236.  
 American Mut. Aid Asso. v. Bronger, (1890) 11 Ky. Law Rep. 902: 241, 243.  
 American Mut., etc. v. Helburn, 2 S. W. Rep. 495: 299.  
 American Order of Scottish Clans v. Merrill *et al.*, Mass. S. J. C., (1890) 24 N. E. Rep. 318: 192.  
 Anderson v. Edie, Park 640: 258.  
 Anderson v. Fitzgerald, (1853) 4 H. L. Cas. 484: 235.  
 Andree v. Fletcher, 3 T. R. 266: 72, 264.  
 Ashbury Ry. Co. v. Riche, L. R. 7 H. L. 694: 130.  
 Ashford v. Victoria Mutual, 20 C. P. 434: 237.  
 Ashley v. Ashley, 3 Sim. 149: xxxvii, 258, 263.  
 Atty.-Gen. of Canada v. Atty.-Gen. of Ontario, 20 O. R. 222: 202.  
 Attorney-General v. Ray, L. R. 9 Ch. App. 397: 252.  
 Augusta v. Earle, 13 Pet. 519, 592: 157.  
 Austin v. Searing, 16 N. Y. 112: 303.  
 Avery v. Equitable Life Ass. Soc., (1889) 117 N. Y. 451: 49.

### B.

Badenfield v. Massachusetts Mut. Acc. Asso., 20 Ins. L. J. 716: 271.  
 Bagley v. A. O. U. W., 22 N. E. Rep. 487: 298.  
 Bain v. Ætna Life Ins. Co., (1890) 20 O. R. 6: 49.  
 Bain v. Council Bluffs Ins. Co., 19 Ins. L. J. 258: 31.  
 Baker v. Union Fire Ins. Co., 43 N. Y. 283: 32.  
 Ballagh v. Royal, 5 A. R. 87: 273.  
 Bancroft v. Home Benefit Asso., (N. Y. C. A. 1890) 30 N. Y. St. Rep. 175: 242.  
 Bank of Montreal v. Bethune, 4 U. C. Q. B. 341: 156.  
 Bank of Toronto v. Lambe, L. R. 12 App. Cas. 575: xxxi.  
 Bankers' & Merchants' Mut. Life Asso. v. Stapp, 14 S. W. Rep. 168: 293.  
 Barclay v. Cousins, 2 East 546: 43.  
 Barlow, *re*, 30 L. J. Q. B. 271: 110, 165.  
 Baroness Wenlock v. River Dee Co., L. R. 36 Ch. D. 684: 130.  
 Barteau v. Phoenix Mutual Co., 67 N. Y. 595: 237.  
 Bartlett v. North Avenue Co., 53 L. T. N. S. 611: lvii, 337.  
 Barton v. Connecticut Mut. Ins. Co., 19 Ins. L. J. 57: 259.  
 Bates v. Detroit Mut. Ben. Asso., 17 N. W. Rep. 67: 292.  
 Baxter v. Brooklyn Life Ins. Co., 19 Ins. L. J. 334: 293.  
 Benedict v. Ocean Ins. Co., 31 N. Y. 389: 33.  
 Bentley v. Owego Mut. Ben. Asso., 23 N. Y. St. Rep. 470: 239.

Bentz v. Northwestern Aid Asso., 19 Ins. L. J. 142: 306.  
 Bergman v. St. Paul Mutual, 29 Minn. 275: 130.  
 Berrie v. Moore, 1 Chy. Ch. 107: 349,  
 299: xxv.  
 Block *et al.* v. Valley Mutual Ins. Asso.,  
 20 Ins. L. Jour., 555: 86.  
 Bloomington Mut. Life Ben. Asso. v.  
 Blue, (1887) 16 Ins. L. J. 486, 120  
 Ill. 121: 131, 261.  
 Bloxam v. Metropolitan Ry. Co., L. R.  
 3 Ch. 337: 210.  
 Bogardus v. New York Co., (1886) 101  
 N. Y. 328: 49.  
 Bolton v. Bolton, 73 Me. 299: 33, 87.  
 Box v. World Mutual Co., 64 N. Y. 236:  
 239.  
 Borgraefe v. Knights of Honor, 26 Mo.  
 App. 218: 289.  
 Box v. Railway Passenger Co., 56 Iowa  
 664: 271.  
 Boyce v. Phoenix Mutual, 14 S. C. R.  
 723: 368.  
 Boyle v. Bettws Colliery Co., L. R. 2  
 Ch. D. 726: 337.  
 Bray v. Farwell, 81 N. Y. 600: 131.  
 Brethren, The, v. McDonald, 122 Pa.  
 324: xliii.  
 Bridgman v. The London Life, 44 U. C.  
 Q. B. 536: 245, 246.  
 Briggs v. McCullough, 36 Cal. 550: 46.  
 British Equitable Co. v. G. W. Ry. Co.,  
 38 L. J. Ch. 314: 241.  
 Britton v. Royal Arcanum, (1889) 46  
 N. J. Eq. 102: 235, 244.  
 Brockway v. Mutual Benefit Co., 9 Fed.  
 Rep. 249: 245.  
 Brogan v. Man. & Merchants Mut. Fire,  
 29 C. P. 414: 237.  
 Brown v. Freeman, 4 DeG. & S. 444: 13,  
 261.  
 Brown v. Metropolitan Co., 65 Mich. 306:  
 242, 243.  
 Benson v. Ottawa Agricultural, 42 U.  
 C. R. 282: 237.  
 Brown v. Perry, 1 Chy. Ch. 253: 347.  
 Bruce v. Garden, L. R. 5 Ch. 33: 258.  
 Burkhard v. Traveler's Co., 102 Pa. St.  
 262: 271.  
 Burton v. Eyden, L. R. 8 Q. B. 295: 39.  
 Butler v. Standard, 4 A. R. 391: 273, 375.

## C.

California Ins. Co. v. Gracey, 20 Ins.  
 L. J. 28: 312.  
 Cameron, Mason v. Cameron, *re*, 21  
 O. R. 634: 362, 364.  
 Cameron v. Monarch, 7 U. C. C. P. 212:  
 312.  
 Campbell v. New England Mut. Co., 98  
 Mass. 381: 235, 261.  
 Campbell v. The National Life Ins. Co.,  
 24 U. C. C. P. 133: 173, 242, 371.  
 Campbell v. Strangeways, L. R. 3 C. P. D.  
 105: 312.  
 Carter v. Drury, 1 Ves. and B. 154: 303.  
 Carter v. John Hancock Mut. Life Ins.  
 Co., 127 Mass. 153: 46.  
 Carr v. The Fire Ass. Ass., (1886) 14 O. R.  
 487: 44.  
 Cascade Fire & Marine Ins. Co. v. Jour-  
 nal Publishing Co., 20 Ins. L. J. 395:  
 312.  
 Castner v. Farmers' Mutual, etc., 50  
 Mich. 273: 300.  
 Chaffey v. Equitable Reserve Fund Life  
 Asso., (N. Y. S. C.) 2 N. Y. Suppl.  
 481: 307.  
 Chalfant v. Peyton, 19 Ins. L. J. 175: 55.  
 Charter Oak Co. v. Brant, 47 Mo. 419:  
 260.  
 Chicago Life, etc. v. Warner, 80 Ill.  
 411: 294.  
 Chicago Mutual Life Indemnity Asso. v.  
 Hunt, Atty.-Gen., Ill. S. C. (1889),  
 20 N. E. Rep. 55: 138, 225, 267.  
 Christian Union v. Yount, 101 U. S. 356:  
 158.  
 Clapp v. Mass. Benefit Asso., 146 Mass.  
 519: 244.  
 Clark v. Clark, 3 Chy. Ch. 67: 350.  
 Clarke v. Bradlaugh, L. R. 8 Q. B. D. 63:  
 312.  
 Clarke v. Union Fire Ins. Co., 10 P. R.  
 313, 6 O. R. 223: 189.  
 Colonial Life Ass. Co., The v. The Home  
 and Colonial Ass. Co., 33 Beav. 548:  
 190.  
 Cope v. Rowlands, 2 M. & W. 149, 157:  
 xlii, 72, 264.  
 Commercial Bank v. Ives, 2 Hill. 335:  
 312.  
 Commercial League, The, etc. v. People,  
*ex rel.*, 90 Ill. 166: 40.  
 Commonwealth v. Equitable Ben. Asso.,  
 19 Ins. L. J. 340: 95.  
 Commonwealth v. Mayor, 5 Watts. 152:  
 304.

Com  
1  
Comp  
2  
Conn  
M  
2  
Conti  
U  
Conti  
26  
Collet  
23  
Cook  
Cook  
Cornis  
45  
Corso  
26  
Cotten  
41  
23  
Coven  
29  
Craige  
S.  
Crame  
W  
35  
Crawf  
Pa  
Cronkh  
26  
Crossm  
Re  
Crowle  
(18  
Cumbe  
Re  
Currie  
266  
Cushm  
  
Dale v  
Darrov  
19  
Davey  
24  
Dalby  
As  
Davis  
Dear v  
23  
Dennis  
Ins  
65

# Table of Cases.

xv

Commonwealth v. Wetherbee, 105 Mass.  
160 : 36, 59, 87.  
Compton v. Mercantile, 27 Gr. 334 : 237,  
240.  
Connecticut Mutual Life Ins. Co. v.  
Moore, L. R. 6 App. Cases, 644 : 241,  
243.  
Continental Co. v. Chamberlain, 132  
U. S. 307 : 244.  
Continental Co. v. Volger, 89 Ind. 572 :  
261.  
Collett v. Morrison, & Hare, 162 : 257,  
258.  
Cook v. Black, 1 Hare, 390 : 258.  
Cook v. Field, 15 Q. B. 460 : 257.  
Cornish v. Accident Co., L. R. 23 Q. B. D.  
453 : 271.  
Corson's Appeal, 113 Pa. St., 438 : xliii,  
260.  
Cotten v. Fidelity & Casualty Co., (1890)  
41 Fed. Rep. 506, 20 Ins. L. J. 8 :  
237, 271.  
Covenant Mutual v. Spies, 114 Ill. 463 :  
290, 292, 296.  
Craigen v. North American Life, 13  
S. C. R. 278 : xxxvii, 256, 261, 262.  
Cramer, *et al.* v. Masonic Life Assn. of  
Western New York, 9 N. Y. Suppl.  
356 : 289.  
Crawford Co. Mutual v. Cochran, 88  
Pa. St. 230 : 294.  
Cronkhite v. Travelers' Co., 19 Ins. L. J.  
267 : 272.  
Crossman v. Mass. Mutual, etc., 9 N. E.  
Rep. 753 : 67.  
Crowley v. Supreme Council C. B. L.,  
(1890) 10 N. Y. Suppl. 248 : 298.  
Cumberland v. The Albert Ins. Co., Ins.  
Record, 11 May, 1866 : 247.  
Currier v. Continental Co., 57 Vt. 496 :  
260.  
Cushman v. U. S. Co., 70 N. Y. 72 : 243.

## D.

Dale v. Ontario Mut. Life : 365.  
Darrow v. The Family Fund Society,  
19 Ins. L. J. 554 : 307.  
Davey v. Aetna Co., 38 Fed. Rep. 650 :  
245.  
Dalby v. The India & London Life  
Ass. Co., 15 C. B. 365 : 36, 258.  
Davis v. Davis, 49 Me. 282 : 313.  
Dear v. Western, 41 U. C. R. 553 : xxv,  
237.  
Dennis v. Massachusetts Ben. Assn., 19  
Ins. L. J. 811, 31 N. Y. St. Rep.  
652 : 302.

Devlin v. Western Ass. Co., 4 A. R. 281,  
4 S. C. R. 215 : xxxi.  
Dial v. Valley Mut. Life Assn., 18 Ins.  
L. J. 322 : 288, 294, 299.  
Dickson v. Scott, 1 P. R. 366 : 311.  
Dodds v. The Canadian Mutual Aid  
Assn., (1890) 19 O. R. 70 : 41.  
Dolan v. Court Good Samaritan, 128  
Mass. 437 : 303.  
Douglas v. Atlantic Mutual, etc., of  
Albany, 25 Gr. 379 : 157, 328.  
Dozier v. Fidelity & Casualty Co., 20  
Ins. L. J. 794 : 270.  
Dowker v. Canada Life, 24 U. C. R.  
591 : xxxviii, 356.  
Durhaus v. Corey, 17 Mich. 282 : 300.  
Dutch West India Co., The v. Moses,  
1 Str. 611 : 156.  
Dwelling House Ins. Co. v. Wilder,  
(1889) Kan. S. C. 19 Ins. L. J. 235 :  
109, 165.  
Dwight v. Germania Co., 103 N. Y. 341 :  
244.  
Dwyer v. Edie, Park 639 : 259.

## E.

Edington v. Aetna Co., 77 N. Y. 564,  
572, 100 N. Y. 536 : 244.  
Edington v. Mutual Co., 67 N. Y. 185 :  
243.  
Elkhart Mutual Assn. v. Houghton, 103  
Ind. 286 : 259.  
Ellicott v. United States Ins. Co., 8  
Gill & Johns 166 : 41.  
Elliott v. Bussell, 19 O. R. 413 : 370.  
Employers' Liability Ass. Corp. v.  
Employers' Liability Ins. Co., (1890)  
10 N. Y. Suppl. 845 : 192.  
Endowment & Benevolent Assn. v.  
State, 35 Kan. 258 : 59.  
Epstein v. Mutual Aid and Ben. Assn.,  
28 La. Ann. 938 : 300.  
Evans v. Bignold, L. R. 4 Q. B. 622 :  
257.  
Everett v. Desborough, 5 Bing. 503 :  
243.  
Exchange Bank v. Newell, 19 C. L. J.  
253 : 349.  
Eyre v. Glover, 16 East 218 : 43.

## F.

Farrie v. Supreme Council, 15 N. Y. St.  
Rep. 155 : 290.  
Fidelity Mut. Life Assn. of Philadelphia  
v. Ficklin, *et al.*, 20 Ins. L. J. 534 :  
243.

Field v. The Court House Lodge of  
A. O. F. 26 Gr. 467: 303.  
Fire Ins. Companies v. Felrath, 77 Ala.  
20: 313.  
Franklin (Fire) Co. v. Martin, 40 N.  
Law 568, 578: 239.  
Franklin Fire Ins. Co. v. Up de Graff,  
Sansum, 833: 246.  
Fraser v. Phoenix Mut. Life Ins. Co.,  
63 U. C. R. 422: 871.  
Freeman v. Travelers' Co., 144 Mass.  
572: 272.  
Frey v. Mutual Ins. Co., 43 U. C. R.  
102: 301.  
Fuller, *et al.* v. Metropolitan Ins. Co., *et*  
*al.*, U. S. C. C., 1889, 137 Fed. Rep.  
163: 56.

## G.

Gaige v. Grand Lodge, 15 N. Y. St. Rep.  
455: 302.  
Galbraith v. Arlington Mut., 12 Bush.  
(Ky.) 29: 242.  
Garretson v. Equitable Mutual, etc., 38  
N. W. Rep. 127: 301.  
Gellatly v. Mut. Ben., etc., 6 N. W. Rep.  
627: 291.  
Genesee Mut. Ins. Co. v. Westman, 6  
U. C. Q. B. 487: 156.  
German Ins. Co. v. Ward, 90 Ill. 550:  
313.  
Gill v. Canada F. & M. Ins. Co., 1 O. R.  
341: 375.  
Glover v. Giles, L. R. 18 Ch. D. 173:  
134.  
Godsall v. Boldero, 9 East. 72: 36.  
Goldbaum v. Blum, 15 S. W. Rep. 564:  
261.  
Good v. Elliott, 3 T. R. 693: 257.  
Goring v. London M. & F. Ins. Co., 11  
O. R. 82: xxx.  
Goucher v. North Western Traveling  
Men's Asso., 20 Fed. Rep. 596: 241.  
Gouinlock v. Man. & Merchants Mut.  
Fire, 43 U. C. R. 563: 237.  
Goulston v. Royal, 1 F. & F. 27: 43.  
Governors, etc. v. Am. Art Union, 7  
N. Y. 228: 88, 96, 123.  
Grand Lodge A. O. U. W. v. Brand, 46  
N. W. Rep. 95: 298.  
Grattan v. Metropolitan Co., 80 N. Y.  
281, 92 N. Y. 274, 283: 239, 244, 313.  
Grattan v. National Co., 15 Hun. 74:  
259.  
Gray v. National Ben. Asso., 111 Ind.  
531: 239.

Greet v. Citizens, 27 Gr. 121, 5 A. R.  
596: 233, 240.  
Guardian Mutual Co. v. Hogan, 80 Ill.  
35: 260, 261.

## H.

Halford v. Kymer, 10 B. & C. 724: xxxix,  
259, 266.  
Hall v. Supreme Lodge, K. of H., 24  
Fed. Rep. 450: 290, 296.  
Hardwick v. State Ins. Co., 20 Ins. L. J.  
751: 31.  
Hargrove & Co., *ex parte*, L. R. 10 Ch.  
App. 542: 96, 123.  
Haskins v. Ky. Grangers Mutual Ben.  
Society, 7 Ky. Law Rep. 371: 305.  
Hawkes v. Eastern Counties R. Co., 1  
H. L. C. 331: 130.  
Hayes v. Union Mutual Life Ass. Co.,  
44 U. C. R. 360: 252.  
Hebdon v. West, 3 B. & S. 578: 42, 257,  
259.  
Heller v. Crawford, 37 Ind. 279: 72.  
Helping Hand Marriage Asso., *re*, 15  
Phil. Rep. 644: 55.  
Hendriks v. Montagu, L. R. 17 Ch. D.  
839: 190.  
Herman v. Jeuchner, L. R. 15 Q. B. D.  
561: 72.  
Hesinger v. Home Ben. Asso., 43 N. W.  
Rep. 481: 307.  
Higgins v. Phoenix Mut. Co., 74 N. Y. 6:  
243.  
Hill v. Merchants, etc., Ins. Co., 28 Gr.  
561: lviii.  
Hobbs v. Iowa Mut. Ben. Asso., 20 Ins.  
L. J. 434: 167.  
Hodge v. Reg., L. R. 9 App. Cas. 133:  
202.  
Hodson v. The Observer Life A. Co., 8  
E. & B. 40: 257.  
Hollister v. Quincey Ins. Co., 118 Mass.  
478: 293.  
Home Mut. Asso. v. Seager, 128 Pa. St.  
533: 314.  
Home Mutual Fire Ins. Co. v. Garfield,  
(1871) 5 Bennett, 370: 45.  
Hopkins v. Provincial Ins. Co., 18 C. P.  
74: 240.  
Hooper v. Accidental Death Ins. Co., 5  
H. & N. 557: 41.  
Howard v. Refuge Friendly Society, 54  
L. T. R. 641: lii.  
Howe Machine Co. v. Walker, 35 U. C. R.  
37: xxvi.  
Huckman v. Fernie, 3 M. & W. 505: 242.  
Humphreys v. National Ben. Asso., 20  
Atl. Rep. 1047: 236.

121, 5 A. R.  
Hogan, 80 Ill.

C. 724: xxxix,

K. of H., 24  
96.

20 Ins. L. J.

L.R. 10 Ch.

Mutual Ben.  
Rep. 371: 305.  
ties R. Co., 1

Life Ass. Co.,

. 578: 42, 257,

d. 279: 72.

Asso., re, 15

R. 17 Ch. D.

R. 15 Q. B. D.

Asso., 43 N. W.

Co., 74 N. Y. 6:

s. Co., 28 Gr.

Asso., 20 Ins.

op. Cas. 133:

Life A. Co., 8

o., 118 Mass.

, 128 Pa. St.

v. Garfield,

45.

Co., 18 C. P.

h Ins. Co., 5

Society, 54

, 35 U. C. R.

W. 505: 242.

n. Asso., 20

Hutchcroft's Executors v. Travelers  
Ins. Co. of Hartford, (Ky. C. of  
Appeals, 1888) 18 Ins. Law Jour.,  
315, 87 Ky. 300: 267.  
Hutton v. Waterloo Co., 1 F. & F. 735:  
243.

I.

Ingersoll v. Knights of Golden Rule,  
(U. S. C. C.) 21 Ins. L. J. 276: 272.  
Ingram v. Supreme Council, 14 N. Y. St.  
Rep. 600: 302.  
Iowa State Mut. Ins. Co. v. Prosser, 11  
Iowa 115: 287.  
Irwin v. Springfield, etc., Ins. Co., 24  
Mo. App. 145: 312.  
Isatt v. Railway Passenger Co., L. R. 22  
Q. B. D. 504: 270.

J.

Jeffries v. Union Mutual Co., 1 Fed. Rep.  
450: 245.  
Johnson v. Maine & N. B. Ins. Co., 20  
Ins. L. J. 1030: 41.  
Jones v. Scottish Accident Ins. Co.,  
L. R. 17 Q. B. D. 421: 68.  
Jones v. Sisson, 6 Gray. 288: 301.  
Judd v. Fulton, 10 Barb. 117: 312.

K.

Karchner v. Supreme Lodge, 137 Mass.  
368: 292.  
Keefe v. Ward, 18 C. L. T. 166: 349.  
Kentucky Mutual Security Fund Co. v.  
Turrer, 19 Ins. L. J. 565: 306.  
Kenyon v. Knights Templar Asso., 122  
N. Y. 247: 236, 244.  
Kenyon v. Mutual Aid Asso., 19 Ins.  
L. J. 1020: 296.  
Kerr v. Minnesota Mut. Ben. Asso., 18  
Ins. L. J. 546: 307.  
Keystone Mut. Ben. Asso. v. Jones,  
(1890) 20 Atl. Rep. 195: 238.  
Keystone Mut. Ben. Asso. v. Norris, 115  
Pa. 446: xliii.  
King v. Oriental Hotel Co., L. R. 5 Ch.  
App. 420: 337.  
Klein v. Union, 3 O. R. 234: 236, 240,  
245, 374.  
Knickerbocker Co. v. Foley, 105 U. S.  
350: 245.  
Knight v. Supreme Council of C. F., 6  
N. Y. Suppl. 427: 299.

H.I.C.A.—b.

Knights and Ladies of Honor v. Burke,  
20 Ins. L. J. 1051: lii, 261, 262.  
Knights of Honor v. Wickser, 12 S. E.  
Rep. 175: 297.  
Korn v. Mutual Ass. Soc., 6 Cranch. 192:  
287.  
Kreh v. Moses, April 17, 1892: 363.

L.

Laidlaw v. Liverpool and London, 13  
Gr. 377: 240.  
La Manna v. National Security Life and  
Accident Co., (N. Y. S. C.) 32 N. Y.  
St. Rep. 347: 305.  
Lamphere v. A. O. U. W., 47 Mich. 429:  
299.  
Lampkin v. Ont. M. & F. Ins. Co., 12  
U. C. R. 584: 312.  
Law v. The London Indisputable L. I.  
Co., 1 K. & J. 223: 258.  
Lewler v. Murphy, et al., (Conn. S. C.)  
8 Law. Rep. Ann. 113: 305.  
Lawrence v. Accidental Co., L. R. 7  
Q. B. D. 216: 267.  
Lazensky v. Supreme Lodge K. of H.,  
3 N. Y. Suppl. 52: 296.  
Lea v. American, etc., Canal, 3 Abb. Pr.  
N. S. 10: 325.  
Leadbitter v. Aetna Ins. Co., 13 Ma.  
265: 313.  
Leah, re, in Chambers, Jan. 21, 1892:  
363.  
Leeds Estate Co. v. Shepherd, L. R. 36  
Ch. D. 737: 209.  
Lemon v. Phoenix Mutual, 38 Conn. 294:  
261.  
Lender's Executors v. Ins. Co., 4 McCra.  
149: 287.  
Leonard v. Lebanon Co. Mut., 3 W.  
Notes of Cases. 527: 294.  
Lewis v. Phoenix Mutual, 39 Conn. 100:  
lii, 260.  
Liberty Hall Asso. v. Housatonic Co., 6  
Gray, 185: 236.  
Little v. Phoenix Ins. Co., 123 Mass. 380:  
313.  
Liverpool, etc. v. Wyld, 1 S. C. R. 604  
237.  
Livingstone v. The Western Ass. Co.,  
(1868), 14 Gr. 461: 33.  
Lloyd, etc., re, L. R. 6 Ch. D. 339: 337.  
London and Provincial Law Ass. Soc.,  
The v. The London and Provincial  
Joint Stock, etc., 17 L. J. Ch. 37  
N. S.: 190.

London Assurance v. Mansel, L. R. 11  
Ch. D. 368: 236, 239, 241, 243.  
London Ass. Co., The v. The London  
and Westminster Ins. Corporation, 9  
Jurist N. S. 843: 190.  
London Life Insurance Co. v. Wright,  
2 S. C. R. 466: 81.  
Loomis v. Eagle Co., 6 Gray, (Mass.)  
397: 259, 266.  
Lothrop v. Greenfield, etc., Ins. Co., 6  
Allen (Mass.) 82: 301.  
Lowry v. Bourdieu, 2 Doug. 486, lvii, 72.  
Lucena v. Crawford, 2 New Rep. 301:  
41.  
Lycoming Fire Ins. Co. v. Wright, 55  
Vt. 526: 72.  
Lynch v. Dalzell, (1729) 4 Bro. P. C.  
431: xxxvii.  
Lynn, re, Lynn v. The Toronto Gen.  
Trusts Co., 20 O. R. 475: 362, 364.  
Lyon v. Stadaconna, 44 U. C. R. 472:  
237, 240.

## M.

Macdonald v. Law Union Ins. Co., L.R.  
9 Q. B. 332: 234.  
Mace v. Provident Life Ins. Assn., 78 E.  
Rep. 674: 244.  
Mair v. Railway Passenger Co., 37  
L. T. R. 356: 271.  
Malloch v. Plunkett, 1 Chy. Ch. 381:  
249.  
Mallory v. Travellers' Co., 47 N. Y. 52;  
2 Ins. L. J. 839: 261, 270.  
Mandego v. Mutual Life Assn., 19 Ins.  
L. J. 660: 295.  
Manson v. Grand Lodge, etc., 16 N. W.  
Rep. 395: 297, 302.  
Marck v. Supreme Lodge, etc., 29 Fed.  
Rep. 896: 297.  
Martin v. Travellers' Co., 1 F. & F. 505:  
270.  
Marvin v. Universal Life, etc., 85 N. Y.  
278: 295.  
Marx v. Travellers' Ins. Co., 18 Ins. L. J.  
727: 271.  
Masons Ben. Society v. Winthrop, 85  
Ill. 537, 542: 242.  
Massachusetts Co. v. Eshelman, 30  
Ohio St. 647: 238.  
Masters v. Lefevre: 248.  
Matt v. Roman Catholic, etc., Soc., 30  
N. W. Rep. 799: 131.  
May v. Standard, 5 A. R. 622: 273.  
Meacham v. N. Y. State Mutual, 120  
N. Y. 237: 245.

Meagher v. Aetna Ins. Co., 20 U. C. Q. B.  
607, 11 U. C. C. P. 328: 33.  
Mearns v. A. O. U. W.: 365.  
Meikly v. Casselman, 1 Chy. Ch. 292:  
349.  
Mellish, et al., v. The Shirley and Free-  
mantle Board of Health, L. R. 16  
Q. B. D. 446: 280.  
Mercantile Ins. Co. v. Holthaus, 43  
Mich. 423: 313.  
Merchants Bank v. Monteith, 10 P. R.  
588: 367.  
Metropolitan Life Ins. Co. v. Dempsey,  
20 Ins. L. J. 547: 199.  
Metropolitan Safety Fund Assn. v.  
Windover, 20 Ins. L. J. 1064: 305.  
Millar v. Phoenix Mutual Co., 107 N. Y.  
292, 301: 236.  
Millard v. Supreme Council American  
Legion of Honor, 22 Pac. Rep. 864:  
303.  
Miller v. Confederation Life, 11 O. R.  
120, 14 A. R. 218, 14 S. C. R. 330:  
242.  
Miller v. Mutual Benefit Company, 31  
Iowa 216: 237.  
Millers' National Ins. Co. v. Kinneard,  
20 Ins. L. J.: 256.  
Mingeaud v. Packer, 21 O. R. 267, see  
now re Cameron, 21 O. R. 634: 91,  
276, 362, 364.  
Mitchell v. Union Co., 45 Me. 104: 259,  
260, 266.  
Montgomery v. Brown, 2 L. J. N. S. 72:  
311.  
Moore v. Citizens Fire Ins. Co., 14 A. R.  
587: 239, 240.  
Moore v. The Connecticut Mut. Life Ins.  
Co., 6 S. C. R. at 697: 304.  
Morgan v. Pebrer, 3 Bing. N. C. 457: 257.  
Morrison v. Muspratt, 4 Bing. 60: 243.  
Morrison v. Wisconsin Oddfellows'  
Assn., 59 Wis. 162: 242.  
Morton v. Hart, 19 Ins. L. J. 347: 203.  
Mulroy v. Knights of Honor, 28 Mo. App.  
463: 303.  
Murray v. Home Benefit Life Assn., 20  
Ins. L. J. 905: 294.  
Mutual Accident Ins. Assn. v. Barry,  
131 U. S. 100, 121: 40, 269.  
Mutual Aid Assn. for Unmarried Per-  
sons, re, 15 Phil. Reports, 625: 55.  
Mutual Aid Society v. White, 100 Pa. St.  
12: 245.  
Mutual Ben. Assn. v. Hoyt, (1881) 10  
Ins. L. J. 626, 46 Mich. 473: 132.  
Mut. Fire Ins. Co. of Co. Wellington v  
Frey, 5 S. C. R. 82: 228, 312.



# Table of Cases.

XIX

Mutual Ins. Co. v. Houghton, 6 Gray.  
77: 299.  
Mutual Protection Life Ins. Co. v. Lowry,  
84 Pa. St. 43: 294.  
Mutual Reserve Fund Life Assn. v.  
Hamlin, 20 Ins. L. J. 696: 293, 300.

## Mc.

McArthur v. Home Assn., 73 Iowa 336:  
239.  
McCarthy v. Travellers' Co., 8 Ins. L. J.  
208: 270.  
McCarty's Appeal, 17 Weekly Notes of  
Cases (Am.) 182: 189.  
McCollum v. N. Y. Mutual Co., 55 Hun.  
103: 244.  
McConnell v. Iowa Mut. Aid Assn., 79  
Iowa 757: 314.  
McCorkle v. Texas Benevolent Assn., 18  
Ins. L. J. 31, 8 S. W. Rep. 516: 301.  
McCoy v. Metropolitan Co., 133 Mass.  
82: 239.  
McCulloch v. Expressmen's Mutual  
Ben. Assn., (Penn. S. C., 1890) 19  
Atl. Rep. 355: 39.  
McElheran v. The London Masonic  
Mut. Ben. Assn., 11 P. R. 181: 369.  
McDonald, Angus, etc. v. Ross Lewin,  
29 Hun. 87: 287.  
McGlinchy v. Fidelity & Casualty, 18  
Ins. L. J. 128: 272.  
McGurk v. Metropolitan Co., 56 Conn.  
328: 244.  
McQueen v. Phoenix, 4 S. C. R. 660: 237,  
240.  
McSwiney v. Royal Exchange, (1840) 14  
Q. B. 646: 43.

## N.

National Benefit Assn. v. Grauman, 107  
Ind. 288: 270.  
National Ben. Assn. v. Jackson, 114 Ill.  
533: 271.  
Naughton v. Ottawa Ins. Co., 43 U. C. R.  
121: 237, 240, 245.  
Neill v. Travellers' Co., 12 S. C. R. 55:  
271.  
New Era Life Assn. v. Rossiter, 19 Atl.  
Rep. 140: 288.  
New Era Life Assn. v. Weigle, 19 Ins.  
L. J. 82: 288.  
New Jersey Mut. Co. v. Baker, 94 U. S.  
610: 239.

New York Life Ins. Co. v. Delavan, 2  
Bennett 20: 246.  
New York Life Ins. Co. v. Styles, (1889)  
L. R. 14 App. Cas. at 409: 94, 120,  
138.  
Newman v. Covenant Mut. Assn., 76  
Iowa 56: 237.  
Nicholls v. Fayette Mutual, 1 Allen  
(Mass.): 236.  
North American Co. v. Burroughs, (1871)  
69 Pa. St. 43: 39, 270.  
Northampton, etc., Ins. Co. v. Stewart,  
39 N. J. L. 486: 300.  
Numrich v. Supreme Lodge K. & L. of  
Honor, 13 N. Y. Suppl. 582: 243.

## O.

O'Brien v. Home Ben. Society, (N. Y.  
C. A., 1890) 22 N. E. Rep. 954, 4  
N. Y. Suppl. 275: 238, 306.  
O'Brien v. Ohio Ins. Co., 52 Mich. 131:  
313.  
Oddfellows v. Rohkopp, 94 Pa. St. 59:  
245.  
Ogden v. Montreal Ins. Co., 8 U. C. C. P.  
513: liii.  
O'Heron, *re*, 11 P. R. 422: 125, 274.  
Old Wayne Mut. Life Assn. v. Nordby,  
19 Ins. L. J. 793: 307.  
Oldfield v. Price, 2 F. & F. 81: 247.  
Olmstead v. Farmers' Mut., etc., 50  
Mich. 200: 295.  
Olmsted v. Keyes, 85 N. Y. 593: 261.  
O'Reilly v. Guardian Mut. Life Ins. Co.,  
60 N. Y. 169: 312.  
Oriental Hotel Co., *re*, L. R. 12 Eq. 126:  
337.  
Ottawa Forwarding Co. v. Liverpool,  
etc., Ins. Co., 28 U. C. R. 522: 375.  
Otto v. Journeymen Tailors' P. & B.  
Union of San Francisco, 17 Pac.  
Rep. 217: 303.  
Outlay Assurance Society, *re*, L. R. 34  
Ch. D. 479: 329.  
Owens v. B. & O. R. R., U. S. C. C. 188,  
35 Fed. Rep. 715: 147.

## P.

Padstow Total Loss and Collision Ass.  
Assn., *re*, (1882) L. R. 20 Ch. D. 187:  
98, 123.  
Palm v. Medina County Mutual Fire  
Ins. Co., Ohio S. C., 1851, 3 Bennett  
316: 31.



Palmer v. Welsh, 23 N. W. Rep. 412: 262.

Palyart v. Leckie, 6 M. & S. 290: 72.

Parke v. Welch, 33 Ill. App. 188: 259.

Parsons v. The Queen, L. R. 7 App. Cas. 96: xxvi, 32, 237, 273.

Patterson v. Powell, 9 Bing. 320: 72, 256.

Parsons v. Citizens Ins. Co., 43 U. C. R. 271, L. R. 7 App. Cases 96: xxvi, 228, 240, 245, 374.

Paul v. Virginia, 8 Wall. 168: xxviii.

Paxton v. Dryden, 6 P. R. 83: 349.

Payne v. Mutual Relief Society, 6 N. Y. St. Rep. 365: 313.

People v. Benevolent Society, 3 Hun. 361: 304.

People v. Medical Society, 24 Barb. 570: 304.

People v. Mutual Life, 92 N. Y. 105: 296.

People v. Walker, 17 N. Y. 502: 326.

People, *ex rel.* v. Fairman, 92 N. Y. 656: 109, 165.

People, *ex rel.*, Meyers v. Masonic Guild, etc., Mutual Ben. Asso., N. Y. C. A., 1891, 20 Ins. L. J. 858: 288, 306.

People, *ex rel.*, McQuien v. Theatrical Mechanical Asso., (1890) 8 N. Y. Suppl. 678: 290.

Peoria Sugar Refining Co. v. Canada Fire and Marine Ins. Co., 12 A. R. 418: 273.

Peppit v. North British and Mercantile, 1 Russ. & Geld. (Nov. Sc.) 219: 313.

Perry v. Newcastle District M. F. Ins. Co., 8 U. C. R. 363: 72.

Phelan v. North Western Mut. Life Ins. Co., 20 North East. Rep. 827: 292.

Phoenix Co. v. Roddin, 120 U. S. 183: 236.

Piedritsky v. Supreme Lodge Knights of Honor, (1889) 43 N. W. Rep. 373: 238, 244.

Pierce v. Equitable Life Ass. Society, (1888) S. J. C. Mass., 18 Ins. L. J. 110: 50.

Pim v. Reid, 6 M. & G. 1: 240.

Portland v. Topham, L. R. 11 H. of L. 54: 364.

Pound Sons, etc., *re*, L. R. 42 Ch. D. 412: 337.

Pritchard v. Standard Life Asso., 7 O. R. 188: 368.

Provident Co. v. Martin, 32 Md. 310: 271.

### Q.

Queen, The, v. The Registrar of Friendly Societies, L. R. 7 Q. B. 741: 190.

Quinlan v. The Union Fire Ins. Co., 8 A. R. 876: 238.

### R.

Rawls v. American Mutual Co., 27 N. Y. 282: 236.

Reddick v. Saugeen, 15 A. R. 363: 240, 374.

R. v. Lowe, 15 Cox 286: 196.

R. v. The Eastern Archipelago Co., 1 E. & B. 310, 2 E. & B. 856. and 4 DeG. M. & G. 199: 325.

Reg. v. Stapleton, 21 O. R. 679: lv. 14, 30, 84, 202.

Regina v. Wright, 14 O. R. 668: 204.

Reynolds v. Equitable Accident Asso., 17 N. Y. St. Rep. 337: 271.

Reynolds v. The Commercial Fire Ins. Co., N. Y. C. A., 1873, 2 Ins. L. J. 63: 33.

Rice v. Provincial, 7 U. C. C. P. 548: 312.

Richardson v. Home Ins. Co., 21 U. C. C. P. 291: liii.

Roebuck v. Hamilton, Cowp. 737: 256.

Ronald v. Mutual Reserve Fund Life Asso., 18 Ins. L. J. 733: 295.

Robertson v. French, 4 East. 136: 32.

Rosenberger v. Washington Mut., etc., 87 Pa. State 207: 131.

Roth v. Stephenson, Ins. Gazette. Aug. 1, 1866: 247.

Ruse v. Mut. Pen. Life Ins. Co., C. of A. N. Y. 1861, 23 N. Y. 516, 1 Bigelow 472: xxxvii.

Russel v. DeGrand, 15 Mass. 35: 72.

### S.

Sadlers' Co. v. Badceck, 2 Atk. 554: xxxvii.

Samo v. Gore District Mut., 1 A. R. 545, 2 S. C. R. 411: 240, 245, 374.

Sauer v. Sampson Lodge, 102 Ind. 262: 303.

Sawyer, *et al.* v. The Equitable Accident Ins. Co., U. S. C. C., 1890, 19 Ins. L. J. 711, 4<sup>1</sup> Fed. Rep. 30: 31, 239.

Schmidt, *re*, N. Y. S. C., 1890, 10 N. Y. Suppl. 583: 109, 165.

Schneider v. Provident Co., 24 Wis. 28: 271.

Schonfield, *et al.* v. Turner, 12 S. W. Rep. 626: 262.

Scott v. Dickson, 108 Pa. St. 6: 261.

Scott, *et al.* v. Scott, 20 O. R. 313: 362, 364.

Shay v. National Ben. Society, 7 N. Y. Suppl. 287: 294.

Shaffer v. Travelers' Ins. Co., 19 Ins. L. J. 285: 271.

# Table of Cases.

xxi

- Shannon v. Hastings Mut., 2 S. C. R. 394: 237.
- Shaw v. St. Lawrence Co., 11 U. C. R. 73: 240.
- Shields v. Great Northern Ry. Co., 7 Jur. N. S. 631: 68.
- Shilling v. The Accidental Death Ins. Co., 1 F. & F. 116, 2 H. & N. 42: 258, 263.
- Siebert v. Chosen Friends, 23 Mo. App. 268: 291.
- Simmons v. The Syracuse, etc., Society, N. Y. S. C., 92 N. Y. St. Rep. 428: 304.
- Sinclair v. Canadian Mutual, 40 U. C. R. 206, 212: 236, 237.
- Sinclair v. Maritime Passengers' Co., 3 E. & B. 478: 270.
- Singleton v. St. Louis Mutual, 66 Mo. 63: 260, 261.
- Sly v. Ottawa Agricultural Ins. Co., 29 U. C. C. P. 557: 233, 240.
- Smith v. City of London Ins. Co., 14 A. R. 328, 15 S. C. R. 69: 375.
- Snyder v. Travelers' Co., 7 Ins. L. J. 23: 270.
- Somerville v. Joyce, 1 Chy. Ch. 207: 349.
- Southcombe v. Merriam, C. & M. 286: 245.
- Souder v. Home Friendly Society of Baltimore, 20 Atl. Rep. 137: 262.
- Sowden v. The Standard Fire Ins. Co., 5 A. R. 290: 237.
- Stadler, *et al.* v. I. O. B'nai B'rith, 3 Am. Law Record 589: 67.
- Stamm, *et al.* v. North Western Mut. Ben. Asso., (1890) Mich. S. C., 19 Ins. L. J. 348: 93.
- Stanbaugh v. Blake, 19 Ins. L. J. 473: 260.
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- State v. Citizens Ben. Asso., 6 Mo. App. 163: 85, 91, 96, 123.
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- State, *ex rel.* v. Benefit Asso., 6 Mo. App. 172: 87.
- State, *ex rel.* v. Benevolent Society, 72 Mo. 146: 87.
- State, *ex rel.* v. Graham, 66 Iowa 26: 88, 96, 123.
- State, *ex rel.* v. Moore, 42 Ohio St. 103: 165.
- State, *ex rel.* v. Peoples, etc., Asso., 42 Ohio St. 579: 133, 140.
- State to use of Davis, *et al.* v. Thomas, *et al.*, Tenn. S. C., 1890, 19 Ins. L. J. 461: 110, 188.
- Stillman v. Agricultural, 16 O. R. 145: 240.
- Stock v. Inglis, L. R. 10 App. Cas. 263: 43.
- Stockdale v. Dunlop, 6 M. & W. 224: 43.
- Stokes, *in bonis*, L. R. 7 P. D. 255: 345.
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## T.

- Taylor v. Aetna Life Ins. Co., 13 Gray. 484: 312.
- Thacker v. Key, L. R. 8 Eq. 414: 364.
- Thames Haven Dock Co. v. Ross, 4 Man. & Gr. 559: 139.
- Thin, *re*, 10 P. R. 490: 366, 369.
- Thomson v. Weems, L. R. 9 App. Cas. 571: 241, 244.
- Tidswell v. Ankerstein, Peake 151: 43, 258.
- Timayenis v. Union Mut. L. Ins. Co., 21 Fed. Rep. 223: 313.
- Titus v. Glen Falls Ins. Co., 81 N. Y. 410: 313.
- Tobin v. Western Mut. Aid Society, 19 Ins. L. J. 849: 294.
- Toronto General Trusts Co. v. Sewell, 17 O. R. 442: 363.
- Travelers' Co. and Jones, 80 Ga. 541: 271.

True v. Bankers' Life Asso., 20 Ins. L. J. 197: 302.

Tucker v. Mutual Benefit Co., 50 Hun. 60: 266, 270.

Tuttle v. Travelers' Co., 134 Mass. 175: 271.

## U.

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Uhlman v. New York Life Ins. Co., (1888) N. Y. C. A., 17 North East. Rep. 363: 50.

Ulrich v. National Ins. Co., 42 U. C. R. 141, 4 A. R. 84: xxvi.

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Union Fire Ins. Co. v. Fitzsimmons, 32 U. C. C. P. 602: lix, 315.

Union Fire Ins. Co. v. O'Gara, 4 O. R. 359: 315.

Union Mutual Co. v. Reif, 36 Ohio St. 597: 245.

Union Rubber Co. v. Hibbard, 6 U. C. C. P. 77: 156.

## V.

Van Houten v. Pine, 38 N. J. Eq. 72: 302.

Van Valkenburgh v. American Popular Co., 70 N. Y. 605: 304.

Venner v. Sun Life Ins. Co., 1890, 17 S. C. R. 394: 230.

Vezina v. New York Life, 5 S. C. R. 30: xxxvii, 261.

Vivar v. Supreme Lodge Knights of Pythias, (1890), 20 Atl. Rep. 36: 235, 262, 297.

Vose v. Eagle Co., 6 Cush. (Mass.) 42: 237.

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Warnock v. Davis, 1881, U. S. S. C., 104 U. S. 779, 11 Ins. L. J. 450: xlii.

Watson v. Etna Life Ins. Co., 8 P. R. 231: 178.

Watson v. Mainwaring, 4 Taunt. 763: 242.

West v. Sinclair, (10 Jan., 1892): 345.

Wetmore v. Mutual Aid and Ben. Asso., 23 La. Ann. 770: 300.

White v. Agricultural, 22 C. P. 95: 240.

White v. Equitable Nuptial Ben. Union, 76 Ala. 251: 55.

Whitley v. Bailey, L. R. 20 Q. B. D.: 280.

Whitmore, *et al.* v. Supreme Lodge K. and L. of Honor, 13 S. W. R. 495: 262.

Wicksteed v. Munro, 13 A. R. 486: 366.

Wightman v. Western F. & M. Ins. Co., 2 Bennett 336: 246.

Wilder v. Preferred Mut. Acc. Asso., (1888) 14 N. Y. State Rep. 365: 238.

Wilkins v. The Mutual Reserve Fund Life Asso., (N. Y. S. C., 1889,) 7 N. Y. Suppl. 589: 234, 238.

Williams v. German Mutual, 68 Ill. 387: 299.

Wilson v. Jones, L. R. 2 Ex. 139: lii, 43.

Wilson v. Wilson, 7 P. R. 57: 349.

Winspear v. Accident Ins. Co., L. R. 6 Q. B. D. 42: 267.

Worthington v. Curtis, L. R. 1 Ch. D. 419: xxxix, 257, 259, 266.

## Y.

York County Mutual v. Knight, 48 Me. 75: 301.

## INSURANCE CORPORATIONS ACT, 1892.

### INTRODUCTORY CHAPTER.

#### JURISDICTION OF THE PROVINCE IN INSURANCE.

1. The Provincial jurisdiction in insurance is part of that exclusive jurisdiction which the British North America Act devolves upon the Province in matters of property and civil rights: Imp. Act, 30 & 31, Vic. c. 3, s. 92 (13). In considering *The Insurance Corporations Act, 1892*, whether from a technical or from a constitutional point of view, the Act must, of course, be read and interpreted in the light of prior legislation and of the judicial decisions thereon.

2. During the very first session (1868) of the Parliament of Canada the question of jurisdiction in insurance arose upon a private bill to incorporate the Royal Canadian Insurance Company. The constitutional doubts as to the competency of the Federal Parliament even to incorporate an insurance company were then so strong that the promoters were forced to withdraw the bill and bring it before the Ontario Legislature, which

Source of  
the juris-  
diction.

Early  
doubts as  
to Federal  
jurisdic-  
tion.

granted them incorporation by the Act, 31 Vic. c. 53. During the same session, the first Insurance License Act of the Dominion was introduced. On this measure, as will be seen from the Commons Journal and the debates of the day, the constitutional question was so serious that no less than four different drafts of a measure were submitted by the Ministry. The last of these license bills reached its second reading in a very thin House. and in the expiring hours of the session; and, in commending it to the House on this occasion, the Hon. Mr. (afterwards Sir) John Rose, who, as Finance Minister, had the bill in charge, explained that, in deference to the constitutional scruples of the members, he had introduced into the measure a distinct recognition of Provincial jurisdiction in matters of insurance. On the motion for the second reading of the bill, Mr. Mackenzie, as leader of the opposition, moved in amendment, "That in the opinion of this House, the regulation of insurance companies is a subject properly within the jurisdiction of the Provincial Legislatures;" and he stated that, if there was any matter that peculiarly belonged to the Local Legislatures, it was the business of insurance. The Hon. Mr. Chauveau, speaking for the Province of Quebec, also expressed the opinion that the subject of insurance ought in strictness to be remitted to the Local Legislatures. Mr. Blake supported Mr. Mackenzie's amendment, and pointed out that the bill itself recognized the authority of the Provinces to legislate for insurance.

Sir John  
Rose's Bill.

Mr. Mac-  
kenzie's  
amend-  
ment.

3. This question of jurisdiction first came before the Courts of Ontario in *Billington v. Provincial Insurance Co.* (1876), 24 Gr. 299, upon the Act of Ontario, 38 Vic. c. 65, which provided that, in certain cases, the failure to give the proof of loss should not vacate the policy. The defendant company insisted that the Act of the Province was *ultra vires*, and that, having been incorporated by an Act of Canada, the Ontario Legislature could not pass any Act affecting them. In giving judgment against the insurance company, the Court laid it down that, "if a company incorporated by a Canadian Act, does business in Ontario on any subject within the powers of the Provincial Legislature, that Legislature may impose what conditions it pleases on the operations of the company." The validity of the same statute was again affirmed in *Dear v. Western Assurance Company*, (1877), 41 U.C.R. 553, where the defendant company set up that it obtained its power from various Acts of Canada, and that the Local Legislature could not control or regulate any matter connected with the contract which they had entered into. The Court (Harrison, C.J., Morrison, J., Wilson, J.), in delivering judgment, said: "It is not an encroachment on the power of the Dominion Parliament. It is a matter relating to property and civil rights, and also of a local and private nature. There can be no doubt of that."

*Billington  
v. Prov. Ins.  
Company.*

*Dear v.  
Western  
Ass. Coy.*

*Judgment.*

4. In 1876 the Legislature of Ontario passed the Fire Insurance Policy Act, 39 Vic. c. 24. This enactment (whose validity was upheld by every

Ulrich v.  
National  
Ins. Co. *per*  
Harri-  
son, C.J.

tribunal) gave rise to a number of weighty judicial decisions bearing directly on the question of jurisdiction. In *Ulrich v. National Insurance Co.*, 42 U. C. R. 141, affirmed on appeal, 4 A. R. 84, Harrison, C.J., said: "The National Insurance Co., as a corporation, owes its being to the Legislature of the Dominion. That Legislature, when giving it being, not only gave it perpetual succession, but power to contract for insurance against loss or damage by fire; but the form of the contract, and the rights of the parties thereunder must, we think, depend upon the laws of the country or Province in which the business is done.

"In this respect, the defendants are in no better or no worse position than a foreign corporation doing business in the Province of Ontario: *Howe Machine Co. v. Walker*, 35 U. C. R. 37."

Parsons v.  
Citizens  
Ins. Coy.

The validity of the same Act was again contested, and again upheld in *Parsons v. Citizens Ins. Co.*, 43 U. C. R. 261; and in *Parsons v. Queen Ins. Co.*, 43 U. C. R. 271; and the decisions of the Queen's Bench were affirmed in each of three successive appeals to the Court of Appeal, the Supreme Court of Canada, and the Imperial Privy Council: *Parsons v. Citizens Ins. Co.*, 4 A. R. 96, 4 S. C. R. 215, 7 App. Ca. 96; *Parsons v. Queen Ins. Co.*, 4 A. R. 103, 4 S. C. R. 215, 7 App. Ca. 96.

*Per* Bur-  
ton, J.A.

In the Court of Appeal in *Parsons v. Citizens Ins. Co.*, 4 A. R. 96, the following important principles were laid down by Burton, J.A., and concurred in by the other Judges. "The only pretence for this [the contention that the Policy



Act was *ultra vires* is based upon the circumstance that the policy in this case was granted by a company incorporated by the Dominion Parliament. That policies of insurance, being mere contracts of indemnity against loss by fire, are, like any other personal contracts between parties, governed by the local or Provincial law, can, I assume, admit of no question. Then can it make any difference that one of the contracting parties here is a corporation created under a charter granted by the Parliament of the Dominion?

“The Parliament of the Dominion has no power to authorize a company of its creation to make contracts in Ontario, except such as the Legislature of that Province may choose to sanction. That Legislature may, if it thinks proper, exclude such corporations from entering into contracts of insurance here altogether, or they may exact any security which they may deem reasonable for the performance of the contracts.

“The artificial being created by the charter is authorized to make such contracts as may come within its designated purposes, but the Legislature granting the charter can give no privileges to be exercised within any of the Provinces, except with their assent and recognition; and it follows as a matter of course, that these may be granted upon such terms and conditions as the Provinces think fit to impose.

“Within their respective limits, each Legislature is supreme and free from any control of the other. The Dominion Parliament has no more

power to interfere with, or regulate contracts of this nature within any of the Provinces, than has the Legislature of the Province to regulate promissory notes or bills of exchange. The terms upon which insurance business is to be carried on within the Province is a matter coming exclusively within the powers of the Local Legislature, and any legislation on the subject by the Dominion would be *ultra vires*. All that the Legislature has done in the case of the present company is to enable it in its corporate capacity to carry on the business of insurance; but the Local Legislature has the exclusive discretion as to the restrictions under which it shall be carried on within the confines of the Province."

Parsons v.  
Queen Ins.  
Coy. Judgment  
of C.A.

6. In the companion case, *Parsons v. Queen Ins. Co.*, the defendant company, instead of being incorporated under an Act of Canada, was incorporated under an Act of the Imperial Parliament. When the appeal in this case was before the Court of Appeal, 4 A. R. 103, Moss, C.J.A., delivering the judgment of the Court, applied to the case the language of Field, J., (U. S. Supreme Court), in *Paul v. Virginia*, 8 Wall. 168, where the question arose upon the power of the State of Virginia to provide that no insurance company, not incorporated under the laws of the State, should have power to carry on business within the State without license and deposit. As the Federal Congress is invested with the power to regulate commerce with foreign nations and among the several States, it was contended by the plaintiff, who was the

representative of the company incorporated in another State, that the Act was unconstitutional. Speaking of a corporation created by the laws of any State, Field, J., said: "The recognition of its existence even by other States, and the enforcement of its contracts made therein, depend purely upon the comity of these States, a comity which is never extended when the existence of the corporation or the exercise of its powers are prejudicial to their interests or repugnant to their policy \* \* \* They may exclude the foreign corporation entirely; they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest." Applying these words to define the jurisdiction of the Province, Moss, C.J.A., proceeded with the judgment of the Court of Appeal as follows: "This is the language of a tribunal whose high authority upon such questions is universally recognized. Hence it appears that the power to legislate upon the terms on which insurance companies shall be permitted to deal with their customers in this Province belongs to that body which has authority to regulate the incidents of contracts within the Province, and that body beyond dispute is the Local Legislature. Under its power to regulate the legal incidents of contracts to be enforced within its Courts, it can prescribe the terms upon which corporations, either foreign or domestic, shall be permitted to transact insurance within the limits of the Province; and to such regulations all insurers render themselves

*Cites Field,  
J., in Paul  
v. Virginia.*

*Parsons v.  
Queen  
Ins. Coy.  
Judgment  
of C.A.*

liable before the Provincial tribunals. There may be inconveniences attendant upon the possession by the separate Provinces of powers to make totally diverse conditions, and it may tend to impede or prevent the transaction of business by the largest and most desirable companies of non-Provincial origin; but such considerations cannot affect the present question, which simply is, upon which Legislature, the Dominion or the Provincial, has the British North America Act conferred the power to deal with insurance contracts."

PARSONS V.  
CITIZENS  
INS. COY.  
AND PAR-  
KINS V.  
QUEEN INS.  
CO.  
JUDGMENT  
OF PRIVY  
COUNCIL.

7. The above judgments were affirmed on the successive appeals to the Supreme Court of Canada, 4 S. C. R. 215, and the Imperial Privy Council, 7 App. Cas. 96. By the Privy Council it was expressly held that "property and civil rights" in section 92 (13) of the British North America Act must be taken "in their largest sense." And on the subject of a possible conflict of the Dominion Act with the Provincial jurisdiction over property and civil rights, their Lordships set this instructive case: "Suppose the Dominion Parliament were to incorporate a company, with power, among other things, to purchase and hold lands throughout Canada in mortmain, it would scarcely be contended, if such a company were to carry on business in a Province where a law against holding land in mortmain prevails—each Province having exclusive legislative power over property and civil rights in the Province—that it could hold land in that Province in contravention of the Provincial legislation; and, if a company were incorporated

for the sole purpose of purchasing and holding land in the Dominion, it might happen that it could do no business in any portion of it by reason of all the Provinces having passed Mortmain Acts, though the corporation would still exist and preserve its status as a corporate body."

8. Additional decisions upholding the exclusive jurisdiction of the Province in matters relating to insurance contracts will be found in *Devlin v. Western Ass. Co.*, 4 A. R. 281, affirmed 4 S. C. R. 215; *Goring v. London Mutual Fire Ins. Co.*, 11 O. R. 82. In this last case, after citing the decisions of the Privy Council in *Parsons v. Citizens Ins. Co.*, and *Parsons v. Queen Ins. Co.*, the judgment proceeded as follows:

"The question is not whether the provisions of the Ontario Act override or control the provisions of the Dominion Act or not; but whether the Legislature of the Province has or has not exclusive jurisdiction over the subject matter."

"If it has such exclusive jurisdiction, any provisions affecting the same subject matter contained in the Dominion Act would be simply nugatory, because the Parliament of Canada is excluded from any jurisdiction over the matter. And I think this is unequivocally the effect of the decision of the Privy Council in the cases above cited."

9. The very recent and important Privy Council case of the *Bank of Toronto v. Lambe*, (1887), 12 App. Cas. 575, still further defines the nature and extent of Provincial jurisdiction over insurance

Judgment  
of Privy  
Council.

corporations. In that case the Bank of Toronto, the Merchants Bank of Canada, and the Bank of Commerce joined the North British and Mercantile Insurance Company as appellants from decisions of the Court of Queen's Bench of the Province of Quebec. The Province had passed an Act taxing banking, insurance and railway corporations, and requiring them for Provincial purposes to make certain annual statements to the Provincial Treasurer. The exclusive jurisdiction of the Dominion as to banks and banking was strongly pressed upon the Privy Council; but Lord Hobhouse, in delivering the judgment of the Privy Council, said that, "as regards direct taxation within the Province to raise revenue for Provincial purposes, that subject falls wholly within the jurisdiction of the Provincial Legislature. It has been earnestly contended that the taxation of banks would unduly cut down the powers of the [Dominion] Parliament in relation to matters falling within class 2 [British North America Act, s. 91 (2)] viz., the regulation of trade and commerce; and within class 15, viz., banks and the incorporation of banks. Their Lordships think that this contention gives far too wide an extent to the classes in question. They cannot see how the power of making banks contribute to the public objects of the Province where they carry on business, can interfere at all with the power of making laws on the subject of banking, or with the power of incorporating banks. The words 'regulation of trade and commerce' are indeed very wide, and in *Severn's case* [decided by Supreme Court of

Canada, 2 S. C. R. 70,] it was the view of the Supreme Court that they operate to invalidate the license duty which was there in question. But, since that case was decided, the question has been more completely sifted before the Committee, [*i.e.*, Judicial Committee of the Privy Council] in Parsons' case [Parsons v. Queen Ins. Co., and Parsons v. Citizens Ins. Co., 7 App. Cas. 96,] and it was found absolutely necessary that the literal meaning of the words should be restricted in order to afford scope for powers which are given exclusively to the Provincial Legislatures. \* \* \* Then it is suggested that the Provincial Legislature may lay on taxes so heavy as to crush a bank out of existence, and so nullify the powers of the [Dominion] Parliament to erect banks. But their Lordships cannot conceive, when the Imperial Parliament conferred wide powers of self-government on great countries such as Quebec, it intended to limit them on the speculation that they would use it in an injurious manner. People who are intrusted with the great power of making laws for property and civil rights may be well trusted to levy taxes. There are obvious reasons for confining their power to direct taxation and licenses, because the power of indirect taxation would be felt all over the Dominion. But, whatever power falls within the legitimate meaning of classes 2 and 9 [British North America Act, s. 92 (2) (9)], is in their Lordships' judgment what the Imperial Parliament intended to give; and to place a limit on it because the power may be used unwisely, as all powers may, would be an error, and would lead to



insuperable difficulties in the construction of the Federation Act. \* \* \* If they find that, on the due construction of the Act, a legislative power falls within section 92, it would be quite wrong of them to deny its existence because by some possibility it may be abused, or may limit the range which otherwise would be open to the Dominion Parliament."

*RELATION OF INSURANCE CORPORATIONS ACT, 1892, TO THE  
INSURANCE ACT OF CANADA.*

R. S. C.  
c 124.

10. Now, if *The Insurance Act* of Canada, R. S. C. c. 124, is read in the light of these decisions, it seems perfectly clear that, in the absence of concurrent legislation on the part of the Province, a considerable number of the provisions are of questionable validity. And if *The*

55 V. c. 39 (0)

*Insurance Corporations Act, 1892*, is then read, it is equally evident that it supplies such concurrent legislation. Two or three examples will make this clear.

In the case of *Parsons v. Queen Ins. Co.* and *Parsons v. Citizens Ins. Co.*, the jurisdiction of the Dominion was defended on the ground that the regulation of insurance contracts fell within "trade and commerce." This was rejected by all the judges. Despite the accumulated adverse decisions above cited, the Parliament of Canada in 1886 enacted provisions for the regulation of life insurance contracts made by mutual or assessment companies. And these provisions now form section 39 of *The Insurance Act* of



Canada, R. S. C. c. 124. Formerly the Dominion jurisdiction was grounded on "trade and commerce"; but if, as was held by the courts, the contracts of joint stock insurance companies could not be brought under this head, how can the regulation of contracts made by mutual or assessment companies be supported? Article 2471 of the Civil Code of Quebec expressly enacts that "mutual insurance is not commercial:" L'assurance mutuelle n'est pas une opération commerciale." The Dominion Insurance Act nevertheless undertakes by section 39 to regulate such insurance; to minutely define the form of the contract; and to define civil rights and remedies under the contract. The invalidity of this legislation can hardly be doubted. The provisions contained in the section, however, are beneficial in the public interest; and their validity should, therefore, be placed beyond question. Accordingly section 41 (2) of *The Insurance Corporations Act* enacts: "(3) Where a corporation licensed or authorized under section 39 of *The Insurance Act* of Canada is registered under this Act, every policy issued and used in Ontario shall conform and be subject to the provisions of the said section; and upon any contravention of the said section, the corporation shall be liable to have its registry under this Act suspended or cancelled."

Again, *The Insurance Act* of Canada, by sections 27 and 28, invalidates conditions in contracts of life insurance unless the conditions are set out in full on the face or back of the policy, and limits avoiding conditions as to untrue statements.

Here again the legislation is so manifestly beyond the jurisdiction of the Dominion that Mr. Meredith, in 1889, introduced a bill covering the same points into the Ontario Legislature; and, with some amendments and additions, the bill became law as 52 Vic. c. 32. The provisions of this Act are re-enacted in a more comprehensive form in *The Insurance Corporations Act*, so far as to remove all doubt that may arise as to their application.

52 Vic. c. 32  
(0).  
Ins. Corp.  
Act, s. 33.

Then, unlicensed persons in the Provinces of Canada are prohibited by *The Insurance Act* of Canada, section 22, from exercising their civil rights in undertaking contracts of insurance; and any exercise of such civil rights by an unlicensed person is made punishable by fine and by imprisonment at hard labour. For any effectual prohibition of this sort the cases above cited make it abundantly clear that Provincial legislation is necessary. *The Insurance Corporations Act* does, under similar penalties, prohibit persons and unregistered corporations from undertaking insurance contracts, (section 27); but it preserves the right of Dominion licensees by registering their licenses (s. 6). As in the analogous case of registering deeds of land, the mere registration passes upon no question beyond the existence of the mere instrument.

R. S. C.  
c. 124, s. 22.  
  
Ins. Corp.  
Act, secs.  
27, 6.

#### PROVINCIAL DUTIES FLOWING FROM THE JURISDICTION.

11. The Constitution, in giving the Province exclusive jurisdiction over insurance contracts, also casts upon the Province the duty of such legisla-

tion and oversight as experience shows to be necessary. Now the experience of all legislatures in the British Empire and the United States most clearly establishes that, in contracts of insurance, it is essential for the state, as matter of public policy, to lay certain statutory restraints upon each of the parties to the contract.

A. STATUTORY RESTRAINTS UPON THE ASSURED OR THE BENEFICIARY.

12. *First*, as regards the assured: he must have (or, in life insurance, he must, at all events when entering into the contract, *have had*) (a) an insurable interest in the subject insured. The Act, 19 <sup>19 Geo. II.</sup> George II. c. 37, s. 1—still in force in Ontario—records the experience of England as to marine insurance after the old common law restraint of insurable interest (b) had given way to unlimited freedom of contract. In the preamble we are told,—“Whereas, it hath been found by experience that the making insurances, interest or no interest, or without further proof of interest than the policy, hath been productive of many pernicious practices, whereby numbers of ships with their cargoes have either been fraudulently lost and destroyed or taken, by the enemy in time of war, etc.”

(a) *Ashley v. Ashley*, 3 Sim. 149; *Vezina v. N. Y. Life Ins. Co.*, 6 S. C. R. 30; *Craigien v. N. A. Life* (1886), 13 S. C. R. 278.

(b) *Sadlers' Co. v. Badcock* (1743), 2 Atk. 554, *per* Hardwicke, L.C.; *Ruse v. Mutual Benefit Life Ins. Co.*, Court of Appeals N. Y. (1861), 23 N. Y. 516; 1 Bigelow, 472. See also 3 Kent Com. 369. So, in fire insurance, long before the Act of 1774, (14 Geo. III. c. 48) prohibited policies unsupported by insurable interest. Lord Chancellor King, in the House of Lords case *Lynch v. Dalzell* (1729), 4 Bro. P. C. 431, held such contracts to be against the common law; as did also Lord Chancellor Hardwicke in *Sadlers' Company v. Badcock* (1743), 2 Atk. 554.

13. In 1774, the necessity of a similar statutory restraint upon the assured in all other forms of insurance had become patent, as the preamble to *The Gambling Act*, 14 George III. c. 48, informs us. Section 1 of that Act—which is still in force in Ontario (*a*), except as now modified by section 35 of *The Insurance Corporations Act* (see *infra*)—sets out with this recital: “Whereas it hath been found by experience that the making insurances on lives or other events (*b*) wherein the assured shall have no interest hath introduced a mischievous kind of gaming.” The section then proceeds to enact “That from and after the passing of this Act, no insurance shall be made by any person or persons, bodies politic or corporate on the life or lives of any person or persons, or on any other event or events whatsoever, wherein the person or persons for whose use or benefit, or on whose account such policy or policies shall be made, shall have no interest, or by way of gaming or wagering, and that every assurance made contrary to the true intent and meaning thereof shall be null and void to all intents and purposes whatsoever.” Here, though the statutory restriction is laid equally upon both parties to the contract, the burden of the prohibition has, in practice, fallen

14 Geo. III.  
c. 48, s. 1.

Ins. Corp.  
Act, s. 35.

(*a*) *Dowker v. Canada Life Ass. Co.*, 24 U. C. R. 591; *Craig v. N. A. Life Ins. Co.* (1886), 13 S. C. R. 278.

(*b*) “*Or other events.*” Though the title of the Act is “An Act for regulating Insurances upon Lives,” the enacting clauses cover all other forms of insurance, except marine, which had been dealt with by prior legislation, and is expressly excluded by section 4. For the text of this brief but important Act, see notes to section 35 of *The Insurance Corporations Act*, *infra*.

wholly upon the assured. While, on the one hand, he could not enforce the contract as against the insurer, he could not, on the other hand—though the risk had never attached at all—recover back his premiums, for he was *in pari delicto*. See notes to Ins. Corp. Act, ss. 3, 35 (4), *infra*; but now by s. 35 (4), where the insurance company has knowingly or without sufficient inquiry entered into an unlawful contract of child insurance, the person paying the premiums can recover the same with interest.

14. Accordingly, under the law of England, until modified by *The Friendly Societies Act*,\* and also under Ontario law prior to *The Insurance Corporations Act, 1892*, no parent had, in the absence of actual pecuniary interest, an insurable interest in the life of his child: therefore, mere parental relationship did not support a policy effected by a father upon the life of his minor child (e).

Ins. Corp.  
Act, s. 35.

15. Certain insurance companies licensed by the Dominion of Canada to transact the business of life insurance had, in direct contravention of the law of Ontario, issued in this Province an immense number of policies to parents upon the lives of their infant children, in which the parents had no insurable interest. One of these companies, a very large and active organization, devoted itself

Child In-  
surance in  
Ontario.

\* The present provision is contained in 38 & 39 Vic. c. 60, s. 28; the 8th sub-section relaxes the 14th Geo. III., c. 48, as regards Industrial Insurance Companies to the same extent as if they were registered Friendly Societies. See note under paragraph 17, *infra*.

(e) *Halford v. Kymer*, 10 B. & C. 724; *Worthington v. Curtis*, L. R. 1 Ch. D. 419; *Porter on Insurance*, p. 40.

in Ontario almost exclusively to such transactions. The total number of such unlawful contracts actually on foot in the Province in February, 1892, was estimated as 15,000. In preparing a bill for the consideration of the Provincial Legislature it became necessarily an important question how the matter was to be dealt with. These policies were issued in professed ignorance of the law. One course therefore that naturally suggested itself was to declare and continue the Act of 1774, 14 Geo. III. c. 48; and, while protecting existing contracts, to prohibit and penalize further unlawful contracts.

“Industrial” Life Insurance.

16. On the other hand, the remarkable growth of this species of insurance in Ontario, as well as in England (*f*) and in the United States, appeared to show an at all events present demand on the part of the public; though it must be added that the apparent demand is largely due to artificial forcing by means of house-to-house collection of premiums. Weekly collections of the premium in sums of ten (or other multiple of five) cents is the characteristic feature of this so-called “industrial” insurance. It brings a large accession of “new business.” But these weekly demands are apt, after a few payments,

(*f*) In England a bill regulating insurance on children's lives was brought before the House of Lords in 1890 by Dr. Magee, then Bishop of Peterborough and afterwards Archbishop of York. The bill was sent to a select committee. In the evidence taken on July 16th, Mr. Dewey, manager of the Prudential Life Assurance Company, stated that there were insured upon his books the lives of 2,099,369 children under ten years of age; and he estimated the total number of such insurances then on foot in England as 4,149,369. Mr. F. H. Taunton, secretary of the Royal Liver Friendly Society, stated in the course of his evidence that his society had issued 83,433 policies for infants under 12 months old.

to irritate the policyholder and lead to lapses. Then if for any reason the insuring company wishes to end the insurance, it is usually sufficient to instruct the collector to refrain from calling upon the policyholder; for the contract makes it obligatory on the policyholder to pay to the company weekly, but the company is under no obligation to provide a collector, or otherwise to facilitate the payment. In such insurance, accordingly, the lapses bear a very large ratio to persistent policies, so that the total volume of industrial insurance taken, or at any given date on foot, would be no safe indication as to the public utility of such insurance.

17. In England, the demand for insurance on children's lives was met by the clumsy as well as arbitrary expedient of exempting from the operation of 14 Geo. III. c. 48, the insurance contracts of registered Friendly Societies and Industrial Insurance Companies. If the requirement of pecuniary interest to support life insurance rests upon a sound and just principle, that principle applies equally to *all* contracts of the same kind. The principle surely does not cease to apply to B. because B. collects its premiums monthly or weekly, instead of quarterly or annually as A. (g).

Exemptions from,  
14 Geo. III.  
c. 48.

(g) As to Friendly Societies, see 21 & 22 Vic. c. 101, (Imp.) s. 2. The present provision is 38 & 39 Vic. 60, (Imp.) s. 28 (1); by sub-section (8) Industrial Insurance Companies are given the same exemption as Friendly Societies:—(8) "No assurance made, or to be made, by any industrial assurance company, of a sum of money payable on the death of a child under the age of ten years, which would be valid if effected with a registered society, shall be invalidated by reason of any provision contained in the Act of the fourteenth year of His late Majesty King George the

18. The real question was and is,—Does the earlier doctrine of insurable interest require revision in the case of insurances effected by parents (no matter in what societies or companies,) upon the lives of their children? In the United States, some of the ablest jurists have grappled with this question, and a more philosophic conception of what constitutes an insurable interest now prevails. In *Warnock v. Davis* (1881), U. S. Supreme Court, 104 U. S. 779, 11 Ins. L. J. 459, Field, J., said: “It is not easy to define with precision what will, in all cases, constitute an insurable interest, so as to take the contract out of the class of wager policies. It may be stated generally, however, to be such an interest arising from the relations of the party obtaining the insurance, either as creditor or surety for the assured, *or from the ties of blood or marriage to him, as will justify a reasonable expectation of advantage or benefit from the continuance of his life. It is not necessary that the expectation of advantage or benefit should be always capable of pecuniary estimation*: for a parent has an insurable interest in the life of his child, and a child in the life of his parent (a); a husband in the life of his wife, and a wife in the life of her

Third, chapter forty-eight, for regulating insurances upon lives and for prohibiting all such insurances except in cases where person insuring shall have an interest in the life of the persons insured.”—The words “which would be valid if effected with a registered society” have the effect of limiting the payments by Industrial Assurance Companies to sums which Friendly Societies by s. 28 (1) are permitted to pay; so that the aggregate insurance moneys payable at the death of a child under five years must not exceed £6, or of a child under ten years, £10.

(a) 53 V. c. 39 (Ont.), secs. 4, 5.



husband. The natural affection in cases of this kind is more powerful—as operating more efficaciously—to protect the life of the assured than any other consideration. But, in all cases, there must be a reasonable ground, founded upon the relations of the parties to each other, either pecuniary, or of blood or affinity, to expect some benefit or advantage from the continuance of the life of the assured. Otherwise the contract is a mere wager, by which the party taking is directly interested in the early death of the assured. Such policies have a tendency to create a desire for the event. They are, therefore, independently of any statute on the subject, condemned as being against public policy” (b).

19. Adopting this larger conception of insurable interest, the next question was, Can mere parental relationship (without pecuniary interest in the continuance of the life) be safely relied on without any limitation of the amount insured on the life of the child? That there are real dangers to be guarded against cannot be doubted. The experience of the English burial clubs could furnish more than one illustration (c). From the evidence

(b) *So Appl. of Corson*, 113 Pa. 433; *Keystone Mutual Benefit Assn. v. Norris*, 115 Pa. 446; *The Brethren, etc. v. McDonald*, 122 Pa. 324.

(c) “At Stockport Assizes,—and this too has no reference to the present state of trade, being of date prior to that,—a Mother and a Father are arraigned and found guilty of poisoning three of their children to defraud a ‘burial society’ of some £3 8s. due on the death of each child: they are arraigned found guilty; and the official authorities, it is whispered, hint that perhaps the case is not solitary, that perhaps you had better not probe farther into that department of things. This is in the autumn of 1841; the crime itself is of the previous year or season. ‘Brutal

Applica-  
tion of  
indemnity  
to life  
insurance.

taken by the Royal Commission on Friendly Societies (England) (*d*) it appeared that the mortality among children under ten years of age had increased to an alarming extent under the temptation held out by infant insurance. The recommendations of the Commission led to the enactment of section 28 of the *Friendly Societies Act, 1875*, 38 & 39 Vic. c. 60 (Imp.); see note under paragraph 17 *supra*. This legislation was evidently designed to proceed upon the principle of *indemnity*, though the details were badly wrought out. The aggregate insurance money payable to the parent on the death of the child was limited to such sum as, roughly averaging one case with another, might be supposed to reimburse the parents for loss of wages in attending on the sick child and for medical and funeral expenses. It is true that English courts,

savages, degraded Irish,' mutters the idle reader of Newspapers; hardly lingering on this incident. Yet it is an incident worth lingering on; the depravity, savagery and degraded Irishism being never so well admitted. In the British land a human Mother and Father, of white skin and professing the Christian religion, have done this thing; they, with their Irishism and necessity and savagery, had been driven to do it. Such instances are like the highest mountain apex emerged into view; under which lies the a whole mountain region and land not yet emerged. A human Mother and Father had said to themselves, What shall we do to escape starvation? We are deep sunk here, in our dark celiar; and help is far.—Yes, in the Ugolino Hunger-tower stern things happen; best-loved little Gaddo fallen dead on his Father's knees.—The Stockport Mother and Father think and hint: Our poor little starveling Tom, who cries all day for victuals, who will see only evil and not good in this world: if he were out of misery at once; he well dead, and the rest of us perhaps kept alive? It is thought, and hinted; at last it is done. And now Tom, being killed, and all spent and eaten, Is it poor little starveling Jack that must go, or poor little starveling Will?—What a committee of ways and means!"—Carlyle, *Past and Present*.

(a) Fourth Report, pp. 574-5.

as well as our own, exclude the principle of indemnity from life insurance contracts. But *though no proper measure of rights under an actual lawful contract of life insurance*, the principle of indemnity is a most valuable guide in limiting by statute the maximum amount which, in certain cases of temptation to wrong-doing, *can lawfully be contracted for (dd)*. In the Select Committee of the Lords on the Bishop of Peterborough's Children's Life Insurance Bill (July 8th, 1890) (e), some of the

Bp. of  
Peterboro',  
Bill, 1890-1.

(dd) The words of the Gambling Act, 14 Geo. III. c. 48, apparently prohibit all life insurance which is not in the nature of indemnity; so it was held by Lord Ellenborough in *Godsall v. Boldero*, 9 East. 72; but this case was overruled by *Dalby v. India and London Life Co.*, 15 C. B., 18 Jur. 1024, and *Law v. London Indisputable Co.*, 1 K. and J. 223, 1 Jur. N. S. 179. Text-writers and even some courts in the U. S. are disposed to revert to the doctrine of indemnity in Life Insurance. This, however, would overturn the established tables of premiums,—which are exacted from the assured under the understanding that the *whole sum* named in the policy will, at some time or other, be paid by the insurer on the occurrence of the event insured against. It would further, in large measure destroy the public utility of life insurance as an *ascertained* provision for persons dependent on the assured. In a policy of Fire Insurance,—which is a contract of indemnity,—the sum named in the ordinary contract is a mere limitation of the maximum liability,—the ordinary case being that there is no loss, or that the loss is only partial,—and the rate of premium is based on this assumption.

(e) His bill proposed to enact that no insurance should be granted on the death of a child under five years of age for a greater amount than £4 in the aggregate; children over five and under ten, £6; and, beyond that age, boys under fourteen or girls under sixteen years, £8. Section 2 provided that "a society shall not pay on the death of a child, being a boy under fourteen, or a girl under sixteen years of age, except to the person actually conducting the funeral of the child, and on the production by that person of a certificate of death given by the registrar of deaths and containing the particulars required by this Act." This "undertaker clause," as it was called, was abandoned by the Bishop himself in re-introducing the Bill in 1891 (House of Lords, January 22nd, 1891). To enforce the provisions respecting the maximum it was provided that the certificate of death shall bear on its face the amount for which the child's life was insured, and that the registrar should refuse to issue certificates after the maximum had been reached.

Evidence  
before  
Lords'  
committee.

English Judges gave evidence. Mr. Justice Day had no difficulty in assenting to the proposition of the Chairman that "thrift was a very good thing, but it may be too dearly purchased by infanticide"; and added that "it was contrary to public policy that *a profit should be made on death*." The evidence of Mr. Justice Wills was to the effect that he would not prohibit child insurance altogether (*f*), but *would carefully limit the amounts insured*. The present abuses, he said, were, in a considerable measure, due to the demoralizing practices of the house-to-house collectors. The Bill which Dr. Magee, successively Bishop of Peterborough and Archbishop of York, brought forward in the House of Lords in the sessions of 1890 and 1891, was directed against the methods of Industrial Insurance Companies, and of Collecting Societies of the type of the Royal Liver Friendly Society (*g*);

(*f*) Mrs. Fawcett, the well-known writer on Political Economy, advocates, in the case of infant children, a return to the old law of 14 Geo. III. c. 48. On July 26th, 1890, at a public meeting, held in the Hall of Downing College, Cambridge, to consider the subject of infant life insurance, Mrs. Fawcett delivered a long address, and argued that no such insurance should be permitted unless the beneficiary had a pecuniary interest in the life insured.

(*g*) In moving the second reading of his Children's Life Insurance Bill (House of Lords, June 16th, 1890), the Bishop of Peterborough said that, "even if each manager of a collecting society was an archbishop, and every collector a bishop—and he supposed a higher ideal of human perfection could not be conceived by some men—he still thought they were an evil. The agents of the collecting societies, he said, received no less a premium than 30 per cent., and so energetic were they that children were actually insured before they were born, and the sex was afterwards put into the policy. So keen was the competition, that the agents were not too scrupulous as to the character of the parents who insured with them. If a parent or guardian insured a child in two societies, for one penny per week in each, they would at the end of six months make a

but the Committee on the Bill, after the death of their chairman, the Archbishop of York, made little progress, and the Bill was abandoned. Simultaneously, the House of Commons was at work upon the same question. On May 22nd, <sup>Industrial Bill, 1891.</sup> 1891, Sir Herbert Maxwell, for the Government, moved the second reading of the *Industrial Assurance Bill*. This measure was based on the recommendations of the Select Committee appointed to inquire into and report on the operation of section 30 of the *Friendly Societies Act, 1875*; and his proposals affected Collecting Societies as well as Industrial Insurance Companies. After the Committee to which the Bill had been referred had made some progress, Mr. W. H. Smith, for the Government, announced, on June 22nd, that, having regard to the intricacy of the measure, the interests involved, and the period of the session, it had been decided to withdraw the Bill.

20. In the Imperial *Friendly Societies Act* the limitations of insurances upon children's lives are badly wrought out as to details. One sum is made the limit for all children dying under five years; there is another sum for all children dying between five and ten. Now, it is very well known that, where there is a danger of misusing such insurance, the danger constantly diminishes from birth up

Limitations of payments should be graded according to age.

profit, after paying funeral expenses, of £3 16s. 8d., which sum represented the premium on child murder. The death of an insured infant was marked by a little funeral and a big drink. It was computed that 600 children were annually murdered for the sake of the insurance money, and one medical man estimated that in Birmingham alone there were 100 deaths annually to be attributed to that cause."

Ins. Corp.  
Act.

to ten years, when it nearly vanishes. This is perhaps in part because a child after ten years lives more under public observation and protection; but probably still more because, after ten years, the child becomes helpful, or even becomes a wage-earner, so that a sort of pecuniary interest displaces the temptation that the burden of the child's support might suggest in earlier years. And therefore the *Insurance Corporations Act* (section 35) limits the insurance on a child's life to a sum increasing year by year from birth up to ten years; and after ten years, the restriction ceases. The sufficiency of these restrictions must of course be tested by actual results. If, for example, it were found from our vital statistics that the mortality among assured children is abnormally high, that would be a clear indication for further statutory restraints. As such insurance is conducted in Ontario, the children proposed for insurance are usually seen and passed upon by the agent of the industrial insurance company before the risk is accepted; so that, though not reported on by a physician, the lives are, in a restricted sense, *selected*: the rate of mortality among assured children should therefore be perceptibly *lower* than the death-rate among children generally. If statistics should show that the present system of insurance influences the death-rate unfavourably, then the final and effectual remedy lies in restricting insurances on children to payments conditioned on the child reaching a stated age; in other words, pure endowment insurance should be substituted for the present life insurance. Here the most proflig

Remedy  
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abnormal.

gate and worthless of parents would see that their interest lay not in doing away with the child, but in carefully preserving its life. Also in order to restrain waste of the moneys of wage-earners by the lapsing of industrial policies,—at present an evil, and under endowment insurance a larger evil, because a larger waste,—it might further be enacted that, after any policy has been kept on foot for say three years, the policy-holder shall be entitled as of right to a stated equivalent, in the form of a paid-up policy, for the premiums already paid.

The *Insurance Corporations Act* (section 35) Insuring corporations to give notice of statutory restrictions. does not of course advance beyond the support of ascertained facts and present necessities; for speculative legislation is always hazardous.—To prevent ignorance of the new provisions being alleged, it is made (section 35 (1)) the duty of corporations insuring the lives of children under ten years of age, to print the statutory restrictions “in conspicuous type upon every circular soliciting, and upon every application for, and every instrument of contract of, such insurance.”

#### LIFE INSURANCE EFFECTED BY MINORS.

21. Hitherto contractual incapacity has operated as a vexatious restraint upon minors who desired to insure their own lives for the benefit of parents, or of brothers and sisters, dependent upon them for assistance or support. In Ontario, the conditions of society are such that, for many years past, minors of sixteen years and upwards have had



Capacity  
of minors  
for other  
contracts.

R. S. O. c.  
172, s. 10.

the capacity, under certain circumstances, to enter into written contracts of service or work; and the minor is liable upon the contract, and has the benefit thereof as if he were of legal age: R. S. O. 1887, c. 142, s. 5. So minors of any age have long had the right, as if they were of full age, of suing in the Division Courts for wages to the amount of \$100: R. S. O. 1887, c. 51, s. 76; c. 91, s. 25. Now, it seemed an obvious corollary, where a minor has been given capacity, *sui juris*, to contract for wages, and to recover his wages, that he should have the further right to protect and invest his wages. A provision in the *Benevolent Societies Act of 1874* (h),—now continued as R. S. O. 1887, c. 172, s. 10,—makes a minor (irrespective of age), who becomes a member of a Friendly Society, "liable to the payment of fees and otherwise, under the rules of the society, as if he were of full age"; but it gives the minor no rights or remedies as against the society. The theory of the earlier legislation on Friendly Societies,—in Ontario as well as in England,—was apparently that the benefits paid by such societies rested in *donation*,—or, at all events, not in contract; that they were matter of discretion, not obligation. But this grafting of charity and charitable trusts upon insurance has been fruitful only of confusion and disaster. In any scheme of Provident Societies, where the society is to pay benefits to members out of a fund contributed by members, the scheme, to have any permanence or public utility, must rest upon con-

(h) 37 Vic. c. 34, s. 9.



tract; the payments to members must be matter of right, not of favor or discretion.

22. These important matters have been dealt with in *The Insurance Corporations Act*. On the one hand, the contractual incapacity of minors of fifteen years and upwards has been removed, so as to enable the minor to insure his life in any insurance company or friendly society for either his own benefit, or for the benefit of his father, mother, brother or sister; and the minor is competent to surrender such insurance, or to give a valid discharge for any benefit to him accruing, or for money payable to him under the contract: section 35 (7). On the other hand, the relation between any member of a benefit society and the society itself is made contractual: section 2 (8) (12). The liabilities of the member under his contract are limited by section 39; his rights are defined, and means of enforcing them against the society are provided: sections 32-37, 40-46.

Minors' rights, remedies and liabilities under the Ins. Corp. Act.

#### B. STATUTORY RESTRAINTS UPON THE INSURER.

23. The second class of statutory restraints relate to the insurer. Long before *The Insurance Corporations Act, 1892*, the law of Ontario contained various such restraints. The prohibitions contained in the Imperial Statutes, 11 Geo. II. c. 37, s. 1, (no insurance on ships without insurable interest), and 14 Geo. III. c. 48, s. 1 (no insurances on lives, or on property other than ships without insurable interest), are still law in this Province, except so far as the latter provision is

Wager insurances unlawful.

Inquiry  
as to  
interest  
the duty of  
the in-  
surer.

modified by section 35 of *The Insurance Corporations Act* (i). Though restricting the insurers as well as the assured, the burden of these prohibitions—when a contract is held to be unlawful for want of insurable interest—falls practically upon the assured; for he can neither recover upon the policy nor get back his premiums (j). As a general principle, this is right and reasonable. While it is the duty of the insurer to *inquire* as to the existence of an insurable interest in the applicant, still, if the applicant withholds or misstates the facts, the insurer has ordinarily no other source of information. But this is not now the case as regards the ages of children. In the absence of satisfactory evidence in the family, the ages of the children can now be found from public records. Section 35 (4), therefore, enacts that if the insuring corporation wilfully, or without sufficient inquiry, enters into any contract prohibited by the section, the premiums paid under the contract shall be recoverable from the person or persons paying the same, together with legal interest thereon. This provision goes on the principle that the insurer is in this case more in the wrong than the assured; and when,—though the contract is illegal,—the parties are thus not in *pari*

(i) See notes (k) and (l) *infra*.

(j) *Cope v. Rowlands*, 2 M. & W. 149, 157; *Allkins v. Jupe*, 2 C. P. D. 375; *Wilson v. Jones*, L. R. 2 Ex. 150, *per* Blackburn, J.; *Knights and Ladies of Honor v. Burke*, 15 S. W. Rep. 45; *Howard v. Refuge Friendly Society* (1886), 54 L. T. R. 644; cf. *Lewis v. Phoenix Mutual Co.* (1873), 39 Conn. 100. As to the law in the Province of Quebec, see *London & Lancashire Co. v. Lapierre* (1878), 1 Legal News, 506; *Venner v. Sun Co.*, 17 S. C. R. 394.

*delicto*, it has always been held that the premium is recoverable: *Lowry v. Bourdieu*, 2 Doug. 472, *per* Lord Mansfield; *Dowker v. Canada Life*, (1865) 24 U. C. R. 591.

24. Then, as to the frame of the contract, 14 Geo. III. c. 48 (insurances on lives and on property other than ships and cargoes) requires, by section 2, the name of the person for whose use or benefit, or on whose account the policy is effected, to be inserted therein (*k*). This is still law in Ontario, except so far as modified by R. S. O. 1887, c. 136, secs. 4 *et seq.*, and 53 Vic. c. 39, secs. 3 *et seq.*: see *infra*. So as to ships and all kinds of property, 28 Geo. III. c. 56—also still in force in Ontario—requires that in any insurance of property, there must be inserted in the policy the name or names of one or more of the persons interested, or of consignor or consignee of the property, or of the person resident in Great Britain who shall receive the order and effect the policy, or of the person who shall give the order to the agent immediately employed to effect it (*l*). In fire insurance—R. S. O. 1887, c. 167, s. 114—and also in live stock insurance—52 Vic. c. 33, s. 54—the actual conditions of the contract (to be varied only within narrow

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Particular  
contracts  
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(*k*) *Dowker v. Canada Life Ass. Co.*, 24 U. C. R. 591; *Craigie v. N. A. Life Ins. Co.*, (1886), 13 S. C. R. 278.

(*l*) Under 28 Geo. III. c. 56, it is sufficient to insert in the policy the name or names of one or more, though less than all, of the persons interested; but 14 Geo. III. c. 48, apparently required the names of all interested to be so inserted: *Ogden v. Montreal Ins. Co.*, 3 U. C. C. P. 513, where the relation of the three Acts, 19 Geo. II. c. 37, 14 Geo. III. c. 48, and 28 Geo. III. c. 56, was stated by Macaulay, C.J. See also *Richardson v. Home Ins. Co.*, 21 U. C. C. P. 291, *per* Hagarty, C.J.

Extension  
of same  
principles  
to all  
contracts.

limits) are enacted, and the principles of construction are laid down. Similarly, as to life insurance, 52 Vic. c. 32, enacted certain conditions and laid down principles of construction. Now, some of the principles contained in these statutes are of universal application in insurance, and should govern not merely particular classes of contracts, but all contracts of insurance, so that there may be a certain consistency or rather unity in our law. Accordingly the *Insurance Corporations Act*, in sections 33, 34 and 35, extends to all insurances on persons and property, certain requirements of form and rules of construction, which, under previous statutes, were of only limited application. The certificates of friendly societies, equally with the policies of insurance companies, are subject to these new provisions—with this single reservation, that in the setting out of the contract upon the certificate, a friendly society, instead of printing thereon the actual text of all the conditions, may indicate by particular references those articles or provisions of the constitution, by-laws or rules which contain all the material terms of the contract not in the instrument of contract itself set out; but the society must, at or prior to the delivery over of such certificate, deliver also to the assured a copy of the constitution, by-laws, and rules therein referred to.

*RESTRICTIONS AS TO ACCIDENT POLICIES OF INSURANCE.*

25. In Accident Insurance the conditions of some companies' policies have of late become extremely harrassing. Indeed, under certain of these policies, it is difficult to conceive a claim against.

which the company may not within the four corners of the policy find a good technical defence. The importance of Accident Insurance has much increased, and the phrase itself has now an extended meaning. From a recent case in our own courts, *Regina v. Stapleton* (1892), 21 O. R. 679,—Galt, C.J., Rose and MacMahon, JJ.,—it is clear that a very large proportion of the benefit insurance undertaken by Friendly Societies is technically “Accident Insurance.” It became therefore of great consequence to define by statute what is an “accident” for purposes of insurance. Section 36 of the *Insurance Corporations Act* now provides that “the event insured against shall be deemed to include any bodily injury, either happening without the direct intent of the person injured, or happening as the indirect result of his intentional act, such act not amounting to voluntary or negligent exposure to unnecessary danger.” How many subtle technical defences to claims this provision obviates will be best understood by those familiar with Accident Insurance cases: see annotations to Section 36, *infra*.

#### ENFORCEMENT OF STATUTORY RESTRAINTS.

26. No matter how salutary or necessary its enactments relating to Insurance, the Province has hitherto had,—except in the case of its own licensees,—no direct means of ascertaining how far its laws were obeyed, nor, if they were found to be disregarded, had the Province any direct means of enforcing compliance. A case has been noticed

Provincial  
registra-  
tion of  
insurers.

above (paragraph 15) where certain life insurance companies issued thousands of policies in direct contravention of the law of the Province. To remedy this most anomalous state of things, the *Insurance Corporations Act* requires of every organization that undertakes insurance in any form whatsoever to be registered in the Provincial Department of Insurance; and to renew its registry from year to year. The Province will thus acquire direct official knowledge of every insurance organization operating within the Provincial jurisdiction and undertaking therein contracts over which the Province has exclusive jurisdiction, and over which (as before observed) the Constitution, in giving jurisdiction, makes it the duty of the Province to exercise supervision. As one of the incidents of registration the applicant files his forms of contract as exhibits annexed to his sworn application; and he must, as may from time to time be required, exhibit his forms of contract then in actual use. The observance or non-observance of Provincial law is thus directly ascertainable. Wilful and continued contravention of the Provincial law may be visited with suspension or cancellation of registry. This means the suspension or,—where the registry is cancelled,—the termination of the offender's insurance transactions in the Province; for now, as to licensees,—Provincial, as well as Dominion,—the license is only a condition precedent to registry, and without registry it is inoperative within the Provincial jurisdiction.

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General  
effect of  
being un-  
registered.

EFFECT ON PROVINCIAL CORPORATIONS OF BECOMING  
UNREGISTERED.

27. If a Provincial insurance corporation becomes unregistered, the Act has the further effect of placing the corporation in the hands of a receiver. The treasurer, or other officer of the corporation having the keeping or control of its funds, becomes *ipso facto* receiver, and an officer of the High Court. The same applies to the insurance branch where the insuring body was incorporated for other purposes besides insurance. The provisions of the Act relating to receivers are founded upon the jurisdiction inherent in our Provincial Court of Chancery, and therefore now exercisable by any Division of the High Court: R. S. O. 1887, c. 44, sections 23, 35, 53 (8). This old jurisdiction has been obscured, but by no means superseded by the Dominion *Winding Up Act*. There is no general rule that a receiver already appointed must be displaced by the liquidator appointed under the *Winding Up Act*: *Re Pound*, etc., L. R. 42 Ch. D. 402; *Re Lloyd*, etc., 6 Ch. D. 339; *Bartlett v. North Avenue Co.*, 53 L. T. N. S. 611, 612; but, where a resort to the *Winding Up Act* is thought necessary, the ordinary course taken is to continue the receiver as liquidator; and, conversely, where a receiver is applied for after the liquidator has been appointed, the liquidator is usually appointed receiver: *Perry v. Oriental Hotels Co.*, L. R. 5 Ch. App. 420; *Re Oriental Hotels Co.* L. R. 12 Eq. 126; *Boyle v. Bettws Colliery Co.*, 2 Ch. D. 726; *Re Pound*, etc., 42 Ch. D. at 412. In Provincial

Further effect on Provincial corporations.

Jurisdiction as to receivers

R. S. C. c. 129.



Practice as  
to Provin-  
cial Insur-  
ance Cos.

Mutual Fire Insurance Companies a receivership used to be the ordinary machinery for winding up: 36 Vic. c. 44, ss. 74, 75, 76; but in the revision of 1877: (R. S. O. 1877, c. 161, s. 78), an essential provision was omitted: *Hill v. Merchants & Manufacturers Ins. Co.*, 28 Gr. 561. This appears to have been a mere oversight; for the companion Insurance Act R. S. O. 1877, c. 160, continued (section 22) the large powers conferred on receivers of insurance companies by 39 Vic. c. 23 (O.), s. 21. In 46 V. c. 15 (O.) s. 11 (now R. S. O. 1887, c. 167, s. 153), receiver is used synonymously with liquidator; and 53 V. c. 39 (O.), s. 10 (1), expressly provides that the High Court, upon the petition of the Attorney-General or of any one interested, may by judgment or order limit the time within which the corporation shall settle and close its accounts; and may for this specific purpose, *or for the purpose of liquidation generally, appoint a receiver.* In *Union Fire Ins. Co. v. Fitzsimmons et al.*, 32 U. C. C. P. 615, the insurance company's license had been withdrawn; B. had been appointed receiver, and had by order of the Chancery Division sued all members in arrears for calls: on appeal, *held*,—affirming the Court below,—that the suit and proceedings therein were valid. As applied to the liquidation of Provincial insurance companies, the Dominion *Winding Up Act* has proved most tedious and wasteful. In the case of the Union Fire Insurance Company the Provincial license was withdrawn in 1881, and winding up proceedings began. In 1885 in the Court of Appeal, while expressing his opinion that upon one ground—

Union Fire  
Insurance  
Co.



which he designated as a purely technical and unmeritorious objection—the order in appeal ought to be reversed, Osler, J.A., said: “The only practical result of the objection seems to be that the winding up of this insolvent company has been delayed for more than a year. The delay and expense which have been already incurred are a reproach to the administration of justice, the litigation having been pending for nearly five years, with the result, as we understand, that between \$5,000 and \$6,000 of the company's assets have been expended in costs”: 13 A. R. at 295. The litigation worked its way onward to the Supreme Court of Canada, which vacated the order that was in appeal. This was in 1886. A new order was had. Litigation broke out anew, and passing from court to court the Union Fire Insurance Co. had by the year 1890 once more worked its way up to the Supreme Court of Canada. In his judgment Mr. Justice Patterson, citing the words of Osler, J.A., in 1885, said: “The reproach to the administration of justice is now more glaring, for four years more have elapsed; and, save as advanced by the recent hearing of this appeal, *the litigation is precisely at the same stage*, the former order having been replaced by that of the Chancellor, but with an inevitably large addition to the costs”: 17 S. C. R. at 272. This was said in 1890. In 1892 the Union Fire Insurance Company is still before the Courts.

28. Prior to *The Insurance Corporations Act*, it was found necessary in the case of Provincial

Liqui-  
dation  
of Friendly  
Societies:  
R. S. C. c.  
120, s. 3; 52  
V. c. 32, s. 3.

Insurance Companies to resort to *The Dominion Winding Up Act*, because the necessary powers were not elsewhere provided. To friendly societies, that Act seems not to apply; in any case it is wholly unsuited—not only on account of its tedious and wasteful procedure, but because in the case of these societies there would usually be no one sufficiently interested to set the court in motion, or, if set, to *keep* the court in motion. The surplus of friendly society moneys, after paying liabilities, is often very considerable; but the claims of individual members on the surplus are usually too small to induce legal proceedings for their recovery. Hence, in such liquidations, there is more than the ordinary risk of the surplus being wasted or misapplied. The *Insurance Corporations Act*, in the winding up of any Provincial corporation thereunder, makes the Registry Officer a competent party, whenever he deems it necessary to intervene for the protection of any or all of the interests, and he is to be kept informed by the Receiver of all accounts and proceedings in the liquidation: s. 56 (10).

#### LEGAL STATUS OF FRIENDLY SOCIETIES.

29. In the notes to the *Insurance Corporations Act*, (p. 111, *et seq.*) the gradual evolution of our statute law relating to friendly societies has been traced. The insurance feature in these societies, which at first hardly went beyond a *donation* in time of sickness or disability, has in our time so dominated the other purposes that some of the societies became indistin-

guishable in their operations from avowed assessment insurance companies—the important difference, however, remaining that, while the latter were required to give security to the state for the performance of their contracts, and to show visible assets for present debts and also maturing claims, the societies, even if manifestly insolvent, were not restrained in the slightest degree from undertaking unlimited liabilities. Matters were brought to an acute crisis by the irruption into Ontario of paper societies and fraternities that not only duped the people with their worthless certificates of life and accident insurance, but undertook, for a present payment of a few dollars, to pay an endowment of hundreds of dollars within periods of time ranging from seven years to six months (*ll*). Assessment Endowment Societies.

30. During an interval of suspended intelligence,—or worse,—certain of the state legislatures in the United States had let loose these speculative and gambling societies; and now the courts, criminal (*m*) as well as civil, are painfully strug- Disastrous legislation in the U. S.

(*ll*) The pioneer of assessment endowment was the Iron Hall, an Indiana corporation. In some of the seven year societies, the earlier small issues of certificates (held, for the most part, by the organizers and their friends) have been paid out of the later members' moneys, thus giving the business a fictitious show of solvency, and exciting the cupidity of onlookers.

(*m*) "The supreme officers have been here,—some of them. As I looked around, however, I missed many familiar faces of last year. Six of them—it was six yesterday, it may be ten to-day—are in Suffolk County jail; twenty have turned their footsteps toward more congenial climes than Massachusetts; nearly twenty more are under criminal indictment by the grand jury of Suffolk County."—Speech of Insurance Commissioner Merrill of Massachusetts, delivered before the Joint Committee of the State Legislature on Insurance, March 10, 1892.

gling to repair the mischief wrought. In the case of the Golden Lion (*n*), an endowment order authorized by the law of Massachusetts, the full bench of the Supreme Court of that state delivered their decision in May, 1892. After describing the business done by this order,—which was by no means the worst of the endowment orders, having used for “expenses” only about 36 per cent. of its collections, or \$100,000 in less than a year,—the Court went on to say: “*It is not in our power to declare the business contrary to public policy and a fraud upon an unprotected part of the community, since the legislature has authorized it; but it is well to understand with what kind of business we are dealing.*” As an example of *paraleipsis* this judicial utterance could scarcely be excelled.

Experiences of  
Massachusetts.

31. The collapse of these gambling endowment societies has been so rapid that, of 54 operating in Massachusetts in July, 1891, 27—exactly one-half—had gone to pieces by May 2nd, 1892. With this object lesson proceeding daily before its eyes

(*n*) “In the case of the Golden Lion, one of these corporations with some 12,000 members, upon a hearing before Justice Allen of the Supreme Court, one of the officers was asked what position he held in the corporation; he answered that he was the Supreme Chaplain. Asked what were his duties, he stated that he opened the supreme session with prayer. Asked if he were a clergyman, he replied that he was not; and, upon inquiry as to his occupation prior to his appointment to the position of Supreme Chaplain, he stated that he had been a clerk, I think, in a grocery store, at fifteen dollars per week. Asked again what was his salary as Supreme Chaplain, he answered \$7,500 per year! As the supreme session of the Golden Lion was held but once in two years, it will be seen that the cost to the certificate-holders for the services of this Supreme Chaplain was \$15,000 for a single prayer. Evidently prayers of this sort are expensive, but I infer that the endowment corporations must have them.”—*Ibid.*

the Legislature of Ontario had no great difficulty in deciding on the total exclusion of foreign endowment societies: section 4 (2). On the motion (April 11th, 1892), for the third reading of the Bill, an amendment was moved, having the effect of admitting foreign assessment endowment societies to registration. The amendment was defeated on a division of 29 to 47.

The thinking men among all the legitimate orders have been quick to see that, unless the speculative societies are restrained, the whole framework of friendly societies will be brought to the ground (*o*).

It would extend this Introductory Chapter Conclusion beyond all reasonable length were I to sketch even in outline the other important questions dealt with by *The Insurance Corporations Act*, and this is all the more unnecessary for the provisions themselves are discussed in relation to each other, and fully illustrated by cases, in the annotations that follow.

J. H. H.

(*o*) At the Fifth Annual Session of the National Fraternal Congress of the United States (1892) it was declared "to be the sense of this Fraternal Congress that no society whose distinctive features do not conform hereto is eligible to membership in the Congress or entitled to be classed as a fraternal beneficiary society, *We repudiate the speculative societies whose chief aim is to pay sums of money to members during their lifetime, without regard to distress or physical disability, and declare that the aims of any such societies are entirely opposed to the principles upon which the fraternal beneficiary societies are founded, and by virtue of which they exist.*"

In May, 1892, the Ancient Order of United Workmen, which has a membership of nearly 260,000, held its annual convention in the State of New York, adopted the above declaration, and protested against the admission of these endowment societies into the State of New York.

# ANALYSIS OF THE INSURANCE CORPORATIONS ACT, 1892, SHOWING WHAT CORPORATIONS MAY TRANSACT BUSINESS IN ONTARIO.

Transaction of Insurance. Sec. 2 (12).	Lawful by reason of registry.	Corporations registered on Insurance License Register, Sec. 4 (1).	<p>Joint Stock Companies (a) Licensed by Ontario. Sec. 5. (b) Licensed by Dominion. Sec. 6.</p> <p>Mutual Ins. Companies (a) By Ontario, Sec. 5. (b) By Dominion, s. 6.</p> <p>Assessment Life Companies, authorized under R.S.C. cap. 124, ss. 38, 39 : Sec. 6 (2).</p> <p>(1) Societies incorporated under Ben. Soc. Act, prior to March 11th, 1891, for bestowing gratuities on events within Sec. 2 (12) which amend their rules to make payments matter of contract. Sec. 4 (2) B. proviso.</p> <p>(2) Societies incorporated under R.S.O. 1877, cap. 167, and R.S.O. 1887, cap. 172, before 11th March, 1890, insurance contracts being within declaration filed and Society being in <i>bona fide</i> operation at date of application, and being managed according to true intent of declaration and Act. Sec. 8.</p> <p>(3) Societies incorporated before Jan. 1, 1892, by Dominion Act, and thereby authorized to transact insurance without authorization under Ins. Act of Canada. Sec. 9 (1).</p> <p>(4) Railway Insurance Societies and Pension Fund Societies, under Acts of Parliament of Canada. Sec. 9 (2).</p> <p>(5) Trade Unions in Ontario having an insurance fund under authority of the incorporating Act Sec. 9 (3).</p> <p>(6) Corporations with insurance gratuity fund created by Acts of Parliament of Canada. Sec. 9 (4).</p> <p>(7) Solvent Societies duly incorporated elsewhere than in Ontario having an agent authorized by power of attorney to receive process, being in <i>bona fide</i> operation in Ontario prior to March 11, 1890, having membership of 500 residents of Ontario, and being such as if incorporated in Ontario, would be a provident society under the Ben. Soc. Act, authorized to enter into insurance contracts. Sec. 10 (1).</p> <p>(8) Societies incorporated under law of Ontario, or of Canada, before March 11, 1890, transacting at that date and up to the date of application exclusively with their members endowment insurance in Ontario <i>bona fide</i>. Sec. 4 (2) C proviso (a).</p>
		Friendly Societies registered on Friendly Society Register, Sec. 4 (2).	<p>Unlicensed Joint Stock Companies.</p> <p>Foreign Mutual Ins. Companies not being Dominion Licensees and unless specially authorized by Act of the Legislature and licensed thereunder.</p> <p>Assessment Life Companies other than within R.S.C. cap. 124, ss. 38, 39.</p>
		Corporations entitled but neglecting to register or to renew registry. Sec. 2 (6).	
		Companies inadmissible to registry as being, Sec. 27.	<p>i. Society undertaking insurance other than with its own members, exclusively for sickness, disability, mortuary or funeral benefits, or for a sum payable at death exceeding \$3,000. Sec. 4 (2) C.</p> <p>ii. Society which is in effect the property of its officers or collectors, or belongs to a private proprietary. Sec. 4 (2) D.</p> <p>iii. Society which has less than 50 members in good standing or its books. Sec. 4 (2) D.</p> <p>iv. Society conducted as a trading or mercantile venture, or for purposes of commercial gain. Sec. 4 (2) D.</p> <p>v. Society whose insurance fund is held other than as trust funds for the members. Sec. 4 (2) D.</p> <p>vi. Society whose funds are not within the effective control of the persons insured. Sec. 8 (2).</p> <p>vii. Society whose funds are in the control of persons holding office for life. Sec. 8 (2).</p> <p>viii. All foreign assessment endowment Societies. Sec. 4 (2) C proviso (a), and all foreign Societies other than those within (7) <i>supra</i>.</p>
	Unlawful by reason of non-registry.	Friendly Societies inadmissible to registry as being, Sec. 27.	
		Unincorporated Associations and individual Underwriters, unless Dominion Licensees, Secs. 2 (13), 6 (2).	

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# INSURANCE CORPORATIONS ACT, 1892.

55 VIC. CAP. 39.

## SUMMARY OF PROVISIONS.

Summary.

### SECTION 1.

Short title.

### SECTION 2.

Interpretation: (1) "Province;" "Legislature;" (2) "Inspector;" (3) "Registrar;" "Registry;" "Registry Officer;" (4) "Society" or "Friendly Society;" "Offering to undertake contracts;" (5) "Branch;" (6) "Registered Society;" "Unregistered Society;" (7) "Premium;" (8) "Contract;" (9) "Written;" "Sealed;" (10) "Benefit;" "Beneficiary;" (11) "Maximum;" (12) "Insurance;" (13) "Corporation" or "Insurance Corporation;" "Insurance Fund;" "The Insurer;" "The Assured;" (14) "Assessment Insurance" or "Insurance on the Assessment System;" (15) "Maturity" of an Insurance Contract; (16) "Actuarial Liabilities;" "Actuarial Solvency;" "Solvent" Society; (17) "Collector;" (18) "Officer;" (19) "Rules;" (20) "Head Office;" (21) "Chief Agency;" (22) "Due Application;" (23) "Upon proof."

### SECTION 3.

No unregistered corporation to undertake insurance after 31st December, 1892.

Summary.

## SECTION 4.

Two Registers to be kept: (1) Insurance License Register; (2) Friendly Society Register; Corporations ineligible for registration as Friendly Societies; (3) Commencement of section.

## SECTION 5.

Insurance Licensees of Ontario, how to be registered; effect of suspension or cancellation of license.

## SECTION 6.

(1) Insurance Licensees of Canada, how to be registered; (2) Interpretation; (3) Effect of suspension or cancellation of authorization under *The Insurance Act* of Canada; revivor of authorization.

## SECTION 7.

Powers and duties of Inspector of Insurance.

## SECTION 8.

(1) Registration of Societies incorporated under Benevolent Societies Acts of Ontario; (2) Interpretation; society debarred may amend its rules.

## SECTION 9.

(1) Societies exempted from authorization under *Insurance Act* of Canada, how registered under this Act; (2) Railway Insurance Societies; (3) Trades' Union Insurance Societies; (4) Insurance gratuity funds in corporations created by Act of Canada.

## SECTION 10.

(1) Foreign Friendly Societies; (2) Meaning of "Solvent Society" in s. 10.

## SECTION 11.

(1) Powers and duties of Registrar; (2) May require or may take affidavits, etc.; (3) Salary of Registrar.

## SECTION 12.

(1) Application for registry; (2) Extension of time for Application in special cases.



## Summary of Provisions.

3

### SECTION 13.

### Summary.

In certain cases financial statement to accompany application.

### SECTION 14.

(1) Power of Attorney to receive service of process and notices under the Act must accompany application in certain cases; (2) Contents of Power of Attorney; (3) Filing of Power of Attorney.

### SECTION 15.

Duplicates of documents mentioned in sections 13 and 14 to be filed with the Clerk of Process.

### SECTION 16.

Changes in chief agent or agency; declaration of no unnotified change to be made annually.

### SECTION 17.

(1) Service of process thereafter; (2) Substitutional service of process; (3) Reserve funds held in Ontario.

### SECTION 18.

(1) Recording registry; entries on register; (2) Issue of certificates of registry.

### SECTION 19.

(1) Renewal of certain certificates of registry; (2) Effect of suspension or cancellation of the document of authority issued under *Insurance Act* of Canada.

### SECTION 20.

Duration of certain certificates of registry; renewal of certain certificates.

### SECTION 21.

Interim certificate of registry; extension of certificate.

### SECTION 22.

(1) No deposit required of, or permitted to be made by, registered friendly society; Registrar's report no warranty of society's basis or condition; but society may include in its statement valuation of its contracts; (2) Society not authorized by Ontario registry to do business abroad; (3) Misrepresentation of registry.

Summary.

## SECTION 23.

Corporation not to be registered under name identical with, or likely to be mistaken for that of another corporation ; new or different name to have legal authority.

## SECTION 24.

(1) Change of name by corporations within the jurisdiction of the Province ; (2) Public notice to be given of change ; (3) R. S. O. c. 167, s. 20, repealed ; ss. 22, 23 amended ; c. 172, s. 19 (1) amended.

## SECTION 25.

(1) Suspension or cancellation of registry ; (2) Notice to corporation of suspension or cancellation of registry ; effect of notice delivered.

## SECTION 26.

(1) Evidence of registry ; public notice to be given of registry granted or withdrawn ; (2) Effect of notice in *Gazette* ; (3) Official publications to be evidence ; (4) Registry Officer's seal or signature ; (5) His certificate as to facts ; (6) Commencement and end of certificate of registry ; (7) Copies or extracts from office documents ; (8) Interpretation.

## SECTION 27.

(1) Only registered corporation and its agents to undertake insurance ; (2) Penalty for infraction ; (3) Application of fine ; (4) Appeal ; security for costs ; (5) Burden of proof ; (6) Limitation of prosecution ; (7) R. S. O. c. 167, ss. 55, 56, repealed ; s. 3 (2) amended.

## SECTION 28.

(1) Certain corporations to keep such books as may be directed by Registry Officer ; rectification of disordered books  
(2) R. S. O. c. 167, s. 100 repealed.

## SECTION 29.

Annual audit of books of society ; summary statement to be furnished to members and filed with statement to Registrar ;  
(2) Permissible investments.

## *Summary of Provisions.*

5

### SECTION 80.

### Summary.

(1) Special audit in case of fraud, illegal acts or default of audit ; (2) Credentials of special auditor ; (3) Costs of special audit ; (4) Books, etc., the property of the society ; (5) Untrue entries, etc. ; (6) Where the society refuses or obstructs audit.

### SECTION 31.

(1) Report of special auditor ; (2) Registrar's decision ; (3) Evidence may be under oath.

### SECTION 32.

Rules of society deliverable on demand ; (2) Delivery of untrue rules.

### SECTION 33.

(1) Terms, etc., of any insurance contract invalid unless set out in full ; reference to constitution and delivery of copy ; This section not to diminish rights of assured under sections 114-118 of Ontario Insurance Act, or under 52 Vic. c. 33, s. 56 ; (2) Contract not to be invalidated by erroneous statement in application unless material ; (3) Materiality how decided ; (4) Insurer's right of entry after loss ; duty of assured after loss ; proviso.

### SECTION 34.

(1) Error in age not to avoid contract ; but benefit to abate ; (2) Meaning of " Premium " in section ; (3) Fractional part of year ; (4) Where age is taken as greater than known age ; (5) Error may be adjusted before maturity of contract.

### SECTION 35.

(1) Interpretation ; (2) Insurable interest necessary to support a contract ; (3) Sums insurable at ages less than ten years ; (4) where insurance exceeds scale ; (5) Sub-secs. 1 to 5 to appear on circulars, etc. ; (6) Insurance on lives of minors ; (7) Minors of 15 years and upwards competent to insure their lives.

### SECTION 36.

(1) What accident includes.

Summary.

## SECTION 37.

(1) Wives' and Children's Act to apply; (2) Statutory provisions repealed; provisions amended.

## SECTION 38.

(1) Application of section; interpretation; (2) No discrimination to be made between assured where of same expectancy, etc. (3) The policy to set out the actual contract and true consideration; and no rebate or differential rate to be given; (4) Only registered agents to act as agents of certain insurance companies; (5) Insurance agents' register; particulars registered; (6) Material on which registry may be granted; (7) Issue of agent's Certificate of Registry; (8) Fee for certificate; (9) Public notice to be given of registry; (10) Section 26 to apply. (11) Conviction of offence against the Act to operate as revocation of registry; no revivor within three years; (12) No life insurance other than personal to be taken from unregistered agents; (13) Penalty for breach of section; (14) Commencement of section.

## SECTION 39.

Limitation of member's liability in Friendly Society; (2) Release from liability.

## SECTION 40.

(1) Notice before forfeiture of benefit in Friendly Society; Provisos; (2) Conditions of forfeitures to be just and reasonable.

## SECTION 41.

(1) Maximum named in contract shall *prima facie* be payable.

## SECTION 42.

Claims when payable by Friendly Society.

## SECTION 43.

Delivery or service of papers.

## SECTION 44.

(1) Insurance corporation's registry suspended for insolvency; (2) But may be revived on resumption of payments within certain time; (3) Continued default; (4) Time not extended where time limited by other enactment.

## *Summary of Provisions.*

7

### SECTION 45.

Summary.

Registrar to have access to Friendly Societies' books, etc.

### SECTION 46.

(1) Where maximum benefit not paid by society, claimant entitled to inspect society's books, etc.; (2) Claimant may have order from Registrar to inspect.

### SECTION 47.

(1) Annual statement to Registrar; refusal of information; (2) Before whom statement may be sworn to.

### SECTION 48.

Registrar's annual report.

### SECTION 49.

(1) Certain events to cancel registry; (2) Certain events to suspend registry; (3) When the happening of such events is disputed, Registry Officer to decide subject to appeal; (4) On cesser of registry of Ontario corporation, Registry Officer to file notice thereof in the office of Master in Ordinary; (5) "Master," interpretation.

### SECTION 50.

(1) Decision of Registry Officer to be rendered in writing; (2) Certified copy of decision; (3) Affidavits and depositions to be filed; (4) stenographic report of evidence.

### SECTION 51.

(1) Appeal from decision of Registry Officer; (2) Notice of appeal to be given to Registry Officer; (3) If decision reversed, entries to be made in register; (4) Rules or orders as to appeals.

### SECTION 52.

(1) Application of sections 52 to 60; (2) Case of two or more custodians of funds, etc.

### SECTION 53.

(1) Effect of the happening of certain events or of non-registry; (2) Interim receiver forthwith to deposit corporation funds and securities in bank; (3) Bank to give receipts; (4) Interest on money deposited.

### SECTION 54.

(1) Receiver's application for appointment to be filed in Master's office; form of application; (2) In what division entitled; (3) Bank receipt and affidavit to be filed with the application;

Summary. form of affidavit ; (4) Before whom the affidavit may be sworn ; (5) Securities given by receiver to corporation to remain in force ; (6) The Master to issue his certificate of filing and to call in the securities ; non-delivery punishable as a contempt ; (7) Where no securities exist, or are not satisfactory or sufficient.

#### SECTION 55.

(1) Place and time to be appointed for hearing receiver's application ; (2) Public notice of application and of the hearing ; form of notice.

#### SECTION 56.

(1) Disposal of application by Master ; (2) Powers of the Master ; winding up of corporation ; (3) Guarantee company's bond as security ; (4) Trusts company as receiver ; (5) Appeal from Master's decision ; (6) Rules of Supreme Court of Judicature to apply ; (7) Books, etc., of receiver to be open to Registry Officer ; penalty for refusing access or making false entries ; (8) Receiver to deposit moneys in bank ; before passing an account receiver to deliver copy to Registry Officer ; copy of account as passed to be delivered to Registry officer ; (9) Default or laches of receiver ; (10) Registry Officer a competent party.

#### SECTION 57.

(1) On default of interim receiver, Master may appoint another ; (2) Duties of new interim receiver.

#### SECTION 58.

(1) Proceeding on receiver's default of compliance ; (2) Motion to commit.

#### SECTION 59.

(1) Where receiver does not comply after directions given by Registry Officer ; penalty ; (2) Section 27 (3) (4) (5) (6) to apply ; (3) Section 26 to apply.

#### SECTION 60.

Offence by corporation is offence by officers thereof ; continued default constitutes new offence.

#### SECTION 61.

Costs of civil proceedings under the Act.

#### SECTION 62.

Fees.

#### SECTION 63.

Acts amended ; inconsistent enactments repealed.

# Insurance Corporations Act, 1892.

55 VIC. CAP. 39.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. This Act may be cited as *The Insurance Corporations Act, 1892.*

Short Title  
*see sec 1*  
*page 505*  
Time.

*The Insurance Corporations Act, 1892*, received the Royal Assent on the 14th day of April, 1892. This date is, therefore, the date of the commencement of the Act, except as to those sections for which a later commencement is provided: R. S. O. 1887, c. 1, s. 6.

## DEFINITIONS AND INTERPRETATION.

2. In this Act, unless the context otherwise requires ;—

(1) "Province" and "Legislature" mean respectively the Province and Legislature of Ontario.

Interpreta-  
tion.  
Pro-  
vince.  
Legislature

(2) "Inspector" means the Inspector of Insurance for the Province.

Inspe-  
ctor.

**Section**  
**2 (2), (3).**

For an account of the office and duties of the Inspector of Insurance, see *The Ontario Insurance Act*, (R. S. O. 1887, cap. 167), ss. 138 *et seq.* Under the present Act, the duty of determining, distinguishing and registering those insurance corporations which are legally entitled to registry on the Insurance License Register, devolves upon the Inspector of Insurance : section 7 (1) *infra*.

Registrar.  
Registry.

(3) "Registrar" means the Registrar of Friendly Societies for the Province. "Registry," as applied to corporations, means registration on the Insurance License Register, or on the Friendly Society Register, according as the matter pertains to an Insurance Company or a Friendly Society respectively.

Registry  
Officer.

"Registry Officer" means the Inspector of Insurance or the Registrar of Friendly Societies, according as the matter pertains to an Insurance Company or to a Friendly Society respectively.

The first Registrar of Friendly Societies is the Inspector of Insurance : section 11 (1) *infra*.

"Registry," as used in this Act, is the generic term, including specific registrations of particular corporations, persons or things. Thus, Registry includes registration of life insurance agents, section 38 *infra* ; and registration of powers of attorney, section 14 *infra*, as well as registration of corporations on either the Insurance License Register, section 4 (1) *infra* ; or the Friendly Society Register, section 4 (2) *infra*. For the actual matters entered on the Register, see section 18, *infra*.

"Registry Officer" is likewise the generic term, including both the Inspector of Insurance and the Registrar of Friendly Societies. For the purposes



of section 26, Registry Officer includes the Deputy or Assistant Registry Officer, section 26 (8) *infra*.

Section  
2 (4).

(4) "Society," or "Friendly Society," includes any corporation, society, association, or fraternity, benevolent, mutual, provident, industrial, or co-operative, or the like, which, not being a corporation within the intent of sections 5 or 6 of this Act, required by law to be licensed for the transaction of insurance, undertakes or effects for valuable consideration, or agrees, or offers so to undertake, or effect, with any person in the Province, any contract of insurance; and, in the case of any insurance corporation whatsoever, any setting up of a sign or inscription containing the name of the corporation, or any distribution or publication of any proposal, circular, card, advertisement, printed form or like document, in the name of the corporation, or any written or oral solicitation in the corporation's behalf, or any collecting or taking of premiums of insurance shall be deemed, "offering to undertake contracts" within the intent of this Act.

see page 507

Offering  
to under-  
take con-  
tracts.

The special meaning of "Friendly Society" and of "Benevolent Society," in Imperial Statutes, is important to be kept in view when citing English cases. *The Friendly Societies Act*, 38 & 39 Vic., c. 60 (Imp.), s. 8 (1), defines Friendly Societies as societies established to provide by voluntary subscriptions of the members thereof, with or without donations, for relief in sickness or other infirmity, in old age, widowhood, or orphanhood; for payments on birth or death; for payments in distress, to seekers for employment and in case of shipwreck or damage at sea; for endowments; for insurance of tools against fire. In all these cases the fund is raised by a system of voluntary subscription, and the benefits accrue to members, their wives or relatives; while Benevolent Societies, *idem*, s. 8 (3) are

Section  
2 (4).

defined to mean societies for any benevolent or charitable purpose; in practice, this definition has been interpreted to mean societies substantially established for the purpose of providing benefits for persons other than the members, their wives or relatives: Pratt, *The Law of Friendly Societies*, 11th ed. p. 53.

Friendly  
society and  
licensed  
company.

For the purposes of the present Act, Society, or Friendly Society, includes every corporation, not required by law to be licensed for the transaction of insurance (*vide* section 4 (2) D, *infra*), which undertakes contracts of insurance, whatever the purpose for which the corporation was created, or from whatever source it derives its powers. The Act found the business of insurance in Ontario transacted by licensed companies and by unlicensed corporations of various origin and constitution. While preserving license and the incidents of license where already existing, the Act throws all other corporations undertaking insurance contracts into one great class—Friendly Societies. Whether a particular society is entitled to registry depends on the further provisions of the Act; but so soon as it is ascertained that the corporation does not derive its powers to undertake such contracts by virtue of a license or document of authority granted by the Insurance Department either of Canada or of the Province, the corporation falls within the class of Friendly Societies, and the provisions of this Act relating to Friendly Societies are applicable.

For the Friendly Societies recognized as possessing insurance powers and admitted to registry on the Friendly Society Register *vide* Sections 4 (2) B *Proviso*, 4 (2) C *Proviso*, 8 (1) and (2), 9 (1), (2), (3) and (4), 10 (1) and (2). For the Friendly Societies not recognized and not entitled to registry *vide* section 4 (2) A., B., C. and D.

Section  
2 (4).

It follows, from the view taken of Friendly Societies in the Imperial Statute, as societies established to provide a fund for particular purposes by the voluntary subscriptions of the members, that in England the statutes governing the contracts of insurance companies are of doubtful application to society benefits. Thus, in 1851 the question was raised whether the Statute 14, Geo. 3, c. 48, relating to insurable interest, applied to an insurance with a society constituted under the Friendly Societies Acts: *Brown v. Freeman*, 4 De G. and S. 444. But *The Insurance Corporations Act, 1892*, deals purely with corporations entering into contracts: section 4 (2) B. *infra*; and, in so far as the contractual obligations of societies are concerned, they are precisely on the same footing as the contracts of licensed insurance companies.

*Undertakes any contract of insurance.*—The character of the society is ascertained by the nature of the contract it offers to undertake. If that contract is a contract of insurance within section 2 (12) of this Act (*vide infra*) the society is an insurance corporation, and within the intent of the Act. This definition, by the nature of the

Undertaking contract of insurance.

**Section**  
**2 (4).**

business undertaken, is parallel to the definition of "company" in *The Ontario Insurance Act*: " 'Company' means and includes any corporation or any society or association, incorporated or unincorporated, or any partnership, or any underwriter, except as provided by section 3, that undertakes or effects for valuable consideration, or agrees to or offers so to undertake or effect, in the Province, any contract or indemnity, guarantee, suretyship, insurance, endowment, tontine or annuity on life, or any like contract which accrues payable on or after the occurrence of some contingent event: " R. S. O. 1887, c. 167, s. 2 (4).

Offering  
to under-  
take.

*Offering to undertake contracts.*—This provision applies to all insurance corporations, and in addition to the matters formerly provided for by *The Ontario Insurance Act*, R. S. O. 1887, c. 167, s. 2 (5) extends to any collecting or taking of premiums of insurance. Premium includes any valuable consideration given or promised for insurance: section 2 (7) *infra*. If the payment is in effect consideration for insurance it is none the less a premium by reason of being called an entrance fee: *Reg. v. Stapleton*, Feb. 1892, H. C. J., C. P. Div. Section 27 of this Act (*vide infra*) enacts that after the 31st day of December, 1892, no unregistered corporation shall undertake or effect or offer to undertake or effect any contract of insurance in Ontario. Penalties are enacted for infractions of the section: section 27 (2) *infra*. By the terms of section 2 (4) the setting up of a sign or inscription containing

the name of the corporation, or any distribution or publication of any proposal, circular, card, advertisement, printed form or like document in the name of the corporation, or any written or oral solicitation in the corporation's behalf, or any collecting or taking of premiums of insurance, shall be deemed "offering to undertake contracts," within the intent of this Act. To implicate the corporation the soliciting must be by a person authorized in that behalf.

Section  
2 (4).

Offering to  
undertake  
contracts.

(a) Provided that where the corporation is not organized exclusively for purposes of such contracts, then "Society" means only that branch, or department, or division of the corporation which has such contracts in charge; and for purposes of such contracts there shall be kept distinct and separate funds, books, accounts, and vouchers.

It is the case in fraternal orders proper that the corporation is not organized exclusively for the purpose of effecting insurance contracts; but the purposes of the society are wider, *e.g.* fraternal, charitable, social. In such a society there is ordinarily a beneficiary department within the society. Membership in the society does not necessarily imply the existence of the contractual relation of insurer and assured between society and member. But membership in the society at large is a condition precedent to membership in the beneficiary department of the society, and the continuance of the contractual relation is dependent on the member continuing in good standing as a member of the society. Thus, *The Ancient Order of Foresters' Beneficiary Fund* is

Section  
2 (4) a.

Under  
Insurance  
Act of Can-  
ada.

under the exclusive jurisdiction of the Subsidiary High Court of the Dominion of Canada, and is managed and controlled by a committee known as the Beneficiary Committee. The membership of the Fund consists of members of the Ancient Order of Foresters who are in good standing in some Subordinate Court under the jurisdiction of the Subsidiary High Court; and good standing is defined to mean initiation as a member and not being in arrears to the Court to which the member belongs, for a period exceeding a certain time. So also *The Insurance Act* of Canada makes provision for an association for the purpose of life insurance formed in connection with a society or association for fraternal, benevolent, industrial or religious purposes, and exclusively from its members, and which insures the lives of such members exclusively, R. S. C. c. 124, s. 43. This provision is interpreted by the Dominion Insurance Department to mean that any of the organizations mentioned in the section might insure the lives of their members, or if it were thought proper, might organize an association of them for life insurance purposes; but the provision does not contemplate the formation of an association without the society, to obtain patronage of members of the society: *re* The Oddfellows' Fraternal Accident Association: Report of Superintendent of Insurance, Canada, 1890, p. xxxv. Society is for the purposes of the present Act restricted to mean that branch or department or division of the corporation which has the insurance contracts of the corporation in charge. With the other purposes, funds, books or

work of the corporation, the Act is not concerned <sup>See Note</sup>  
Cf. N. Y. Laws, 1883, c. 175, as amended by c. 285  
of the Laws of 1887.

*Branch.*—The insuring section of the corpora- <sup>Branch.</sup>  
tion may be either a department or division of the  
society itself, or be a branch within the proviso in  
sub-section (5) of this section (*vide infra*), that is,  
the committee or persons having, under the  
authority of the respective Acts of Canada, the  
management of the benefit and insurance funds of  
the corporation; *e.g.*, the Committee of the  
G. T. R. of Canada Superannuation and Provident  
Fund. 37 Vic. c. 45 (D) ss. 11 to 14; 41 Vic.  
c. 25 (D) ss. 2-4.

*Distinct and separate funds.*—As a distinct <sup>Separate</sup>  
and separate insurance fund, must be kept all <sup>fund.</sup>  
moneys, securities for money, and assets appropri-  
ated by the constitution, by-laws, or rules of the  
society to the payment of insurance liabilities, or  
appropriated for the management of the insur-  
ance branch, or department, or division of the  
society, or otherwise legally available for insurance  
liabilities: section 2 (13) *infra*. For permissible  
investments of the surplus of the insurance fund,  
*vide* section 29 (2) *infra*. If the society, having  
its head office elsewhere than in Ontario, has in  
charge of officers of the society resident in Ontario  
a reserve fund for the security or assistance of  
members of the society, such fund is deemed to be  
held in trust for members in the jurisdiction of the  
said officers; and until other trustees resident in

Section  
2 (4 a.)

Ontario are appointed by competent authority such officers are deemed to be the trustees of the fund. This trust fund, or so much of it as from time to time remains unexpended, must be invested as enacted in section 29, section 17 (3) *infra*. A copy of the rules relating to the insurance contracts and the management and application of the insurance fund of a society must be delivered to any person on demand and tender of twenty-five cents, section 32 (1) *infra*. Delivery of untrue rules with intent to mislead or defraud, renders the agent or officer so delivering liable to a penalty, section 32 (2) *infra*.

Books.

*Books.*—The Registry Officer may direct from time to time a classification of the contracts to be made and the register and books to be kept; and if it appears to him that such books are not kept in such business like way as to make at any time a proper showing of the affairs and standing of the insuring section of the corporation, the Registry Officer has power to nominate an accountant to audit the books and to give such instruction as will enable the officer in charge to keep the books correctly thereafter. In such cases the expenses of the accountant, not exceeding \$5 per diem and necessary travelling expenses, are borne by the corporation, section 28 (1) *infra*. Over the books of account of the corporation itself, where distinct from those of the insuring section, the Act confers no jurisdiction. The books relating to the insurance funds of the society are the property of the society, and are not the property of its agents



or collectors: section 30 (4) *infra*. An untrue entry in the books, or a refusal or wilful neglect to make any proper entry in the books, constitutes an offence against the Act, punishable by imprisonment: section 30 (5) *infra*. Section  
2 (4) a.

*Member's right to inspect the books.*—When a claim occurs under a contract and the insuring section of the society offers the claimant a less sum than the maximum named in the contract, and either offers no explanation, or alleges as a reason for not paying the maximum, that the fund is insufficient, the claimant is entitled as of right, on written notice to the society, to inspect personally, or by agent, all books and documents relating to the funds, and if the society neglects or refuses to afford the claimant a reasonable opportunity of inspection, the Registrar may give the claimant or his agent an order to inspect the books on a day named; and neglect or refusal thereafter to afford him an opportunity of inspection is an offence against the Act, section 46 (1) and (2) *infra*. This right to inspect extends only to the books and documents relating to the distinct and separate fund of the insurance branch or department of the society. Right to  
inspect  
books.

*Annual statement.*—A statement of the financial condition and affairs of the insurance branch or department must be prepared annually, verified under oath and filed with the Registrar on or before the first day of March. The statement must be on the form supplied by the Registrar on application, section 47 (1) *infra*. Annual  
statement.

Section  
2 (4) a.Audit by  
society.

*Vouchers—Audit by society.*—It is the duty of the officers in charge of the insurance fund to have at least once in every year a *bona fide* and business-like audit made of the books by two auditors, not being officers of the society; and to furnish annually, either to each member direct, or through the lodges, a summary statement showing as the result of the audit the actual assets, liabilities, receipts and expenditures, and the state of the insurance fund. A copy of such statement signed and certified by the auditors must be filed with the annual statement in the Registrar's office, section 29 (1) *infra*. Directors or officers refusing or neglecting to exhibit the books and vouchers, or to allow the same to be inspected or audited for the general purposes of the society, or extracts to be made therefrom, is guilty of an offence punishable by imprisonment, section 30 (5) *infra*. If the society, by its officers, refuses to have the funds, books, and vouchers audited as above, the registry of the society may be suspended or cancelled, section 30 (6) *infra*.

Special  
audit by  
registrar.

*Special audit by direction of Registrar.*—If it is established to the satisfaction of the Registrar that the accounts have been materially and wilfully falsified; or that for eighteen consecutive months there has been no *bona fide* audit of the books and accounts; or if there is filed in the office of the Registrar a requisition for audit signed by twenty-five members or persons entitled to claim, and the requisition alleges specific fraudulent or illegal acts, or repudiation of contracts, or insolvency, the

Registrar may appoint an accountant to audit the society's books and accounts, under his direction: section 30 (1) *infra*. All the books of record and account, vouchers and documents relating to the insurance contracts of the society are included in this audit, section 30 (4) *infra*. A writing under the hand and seal of the Registrar accredits the special auditor, section 30 (2). The expenses of the special audit are borne by the society, or by the requisitioners, as the Registrar may direct: section 30 (3) *infra*. Directors or officers of the society neglecting or refusing to exhibit the books and vouchers, or allowing the same to be inspected and audited and extracts to be made therefrom, are guilty of an offence punishable by imprisonment: section 30 (5) *infra*. If the society, by its officers, obstruct an auditor in the performance of his duties, its registry may be suspended or cancelled: section 30 (6) *infra*. If the report of the special auditor discloses fraudulent or illegal acts, or repudiation of contracts, or insolvency, the Registrar shall furnish the society with a copy of the report, and allow the society two weeks to file a statement in answer: section 31 (1) *infra*. On consideration of the special auditor's report of the statement in answer, and of any further evidence, if any, the Registrar renders his decision in writing, and may thereby continue or suspend or cancel the registry of the society: section 31 (2) *infra*.

Section  
2 (4) a.

Expenses  
of Audit.

Registrar's  
decision.

**Section  
2 (4) b.****Proviso.**

(b) Provided also, that where two or more lodges or branches (by whatever name known) of a society, though separately incorporated, are under the financial or administrative control of a central governing body within the Province, or a duly authorized Provincial representative of the society, then such governing body, if incorporated, or such Provincial representative of the society may, in the discretion of the Registrar, be dealt with as the society for any or all purposes of this Act.

Lodges  
under con-  
trol of  
governing  
body.

It is sometimes the case in the fraternal orders that each subordinate lodge is a corporation, and that the contract of the member is with his lodge, or that one contract (*e.g.* funeral benefit) is with his lodge, while the member has a separate contract with the central body or grand lodge for a different insurance. In such cases, where the subordinate lodges are under the financial or administrative control of a central governing body within the Province, or a duly authorized Provincial representative of the society, the governing body, if incorporated, or the Provincial representative, may in the discretion of the Registrar, be dealt with as the society. It is not necessary that the central body guarantee or become responsible for the fulfilment of the lodge contracts. It is sufficient if the central body has power to compel an assessment to be made; or otherwise can ensure the carrying out of the contracts; or can prevent repudiation of contract. And a power to revoke or suspend the charter of the subordinate lodge in the event of failure to satisfy its contracts is a sufficient control within the proviso.

(c) Provided, also, that, in the case of a friendly society incorporated elsewhere than in Ontario, the central governing or controlling body within the Province, if incorporated by virtue of a statute of Ontario, may, in the discretion of the Registrar, be dealt with as the society for any or all purposes of this Act.

Sections  
24(c-5).  
Proviso.

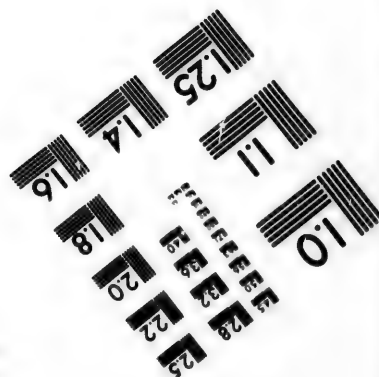
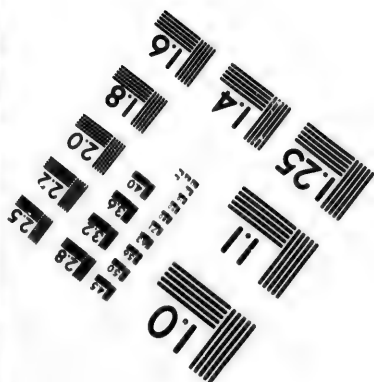
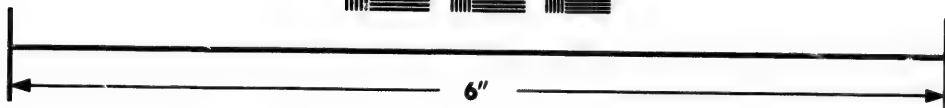
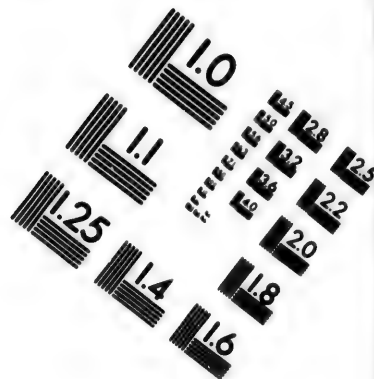
The central body within the Province of a society incorporated elsewhere than in Ontario, if incorporated by virtue of a statute of Ontario, may be dealt with as the society for purposes of this Act. If the society has, in the control of its officers resident in Ontario, a reserve fund for the security or assistance of its members, such fund becomes a trust fund for the members within the jurisdiction of the officers in charge of the fund, section 17 (3) *infra*. The central body, with its fund, is for all practical purposes the society in Ontario, and the foreign executive or governing body has no status under the Act.

The gov-  
erning  
body the  
society.

(5) "Branch" means any number of the members of a corporation under the control of a central body, having within the intent of sub-section 13 of this section, a separate insurance fund administered by themselves, or by a committee of officers appointed by themselves.

This definition follows the definition in the Friendly Societies Act, 38 & 39 Vic. c. 60 (Imp.) s. 4: "*Branch* means any number of the members of a society under the control of a central body, having a separate fund administered by themselves or by a committee or officers appointed by themselves." For the purposes of the Act such branch may be dealt with as the society.





# Photographic Sciences Corporation

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**Section  
2 (5)-(6).**

For what is included in "insurance fund" *vide* section 2 (13) *infra*, and notes under section 2 (4) *Proviso a. supra*.

Provided that, in the corporations mentioned in sub-sections 2 and 4 of section 9, "Branch" shall include the committee or persons having, under the authority of the respective Acts of Canada, the management of the benefit and insurance funds, or gratuity funds, respectively.

**Committee  
the society.**

The committee or persons having the management of the insurance fund is the society for the purposes of the Act: *Vide* notes under section 9 (2) and (4) *infra*.

**Regis-  
tered cor-  
poration or  
person.**

**Unregis-  
tered cor-  
poration or  
person.**

(6) "Registered" corporation or person means a corporation or person duly registered or deemed to be so registered under this Act; and "Unregistered" corporation or person includes any corporation or person not so registered or not deemed to be so registered for the kind or character of insurance transacted or undertaken, or offered to be undertaken or transacted, whether such corporation or person was never duly registered for that purpose, or, having been so registered, lost such registry through non-renewal, suspension, revocation or cancellation.

Compare 38 & 39 Vic. c. 60 (Imp.) s. 4.

*Registered and Unregistered Corporations.*—Registration consists in (a) Registry on the *Insurance License Register*, section 4 (1) *infra*; or, (b) Registry on *The Friendly Society Register*, section 4 (2) *infra*.

Registration in accordance with the provisions of the Act is a necessary preliminary to the undertaking of contracts of insurance within section 2

(12) *infra*. For “after the 31st day of December, 1892, no insurance, other than as enacted by and for the purposes of *The Land Titles Act*, shall be transacted or undertaken in Ontario except by a corporation duly registered as herein provided” : section 3 *infra*. And also, “after the 31st day of December, 1892, no person or persons, or body corporate or unincorporated, other than a corporation standing registered under this Act, and persons duly authorized by such registered corporation to act in its behalf, shall undertake or effect, or offer to undertake or effect any contract of insurance” : section 27 (1) *infra*.

Section  
2 (6).

For the purposes of the Act, a corporation is unregistered which was never duly registered, or which was never duly registered for the kind or character of insurance transacted or undertaken, or offered to be undertaken or transacted. On “offering to undertake contracts,” *vide* section 2 (4) *supra*. The certificate of registry sets forth *inter alia* that the corporation is registered for the term and for the purposes stated in the certificate : section 18 (2) *infra*. A corporation likewise becomes an unregistered corporation by the expiry of the certificate of registry. The first day and the last day of the term for which the corporation is registered is specified in the certificate, and the corporation is deemed to be registered from the commencement of the first day to the end of the last day so specified : section 26 (5)a, *infra*. Corporations receiving a license or other document of authority under *The Insurance Act* of Canada,

Unregis-  
tered cor-  
porations.

**Section  
2 (6).**

On suspen-  
sion or  
cancellation  
of  
license.

upon due presentation thereof, and payment of the fee prescribed, obtain renewal of registry: section 19 (1) *infra*. The registry of corporations licensed by the Province of Ontario is renewed on the renewal of their licenses: section 5 (1) *infra*; and of other corporations, on filing the annual statement prescribed in section 47, and otherwise complying with the law: section 20 *infra*. A corporation is also deemed to be unregistered, although once registered, if it loses registry by suspension, revocation or cancellation. The suspension or cancellation of the document of authority under *The Insurance Act* of Canada operates *ipso facto* as a suspension or cancellation of registry under this Act: section 19 (2) *infra*. Similarly, suspension or cancellation of the license issued under *The Ontario Insurance Act* operates *ipso facto* as suspension or cancellation of registry under this Act: section 5 (2) *infra*. And any insurance corporation is liable to have its registry suspended by the Registry Officer upon the failure of the corporation to pay an undisputed claim on an insurance contract for the space of 60 days after being legally payable, or, if disputed, after final judgment and tender of a legal valid discharge, and, in either case, after notice of default to the Registry Officer: section 44 (1) *infra*. And if within sixty days after such notice the corporation has not fully paid all undisputed claims and final judgments, the Registry Officer shall cancel the registry of the corporation: section 44 (2) *infra*. In the case of corporations other than those receiving license or document of authority under *The Insurance Act* of

Canada, or *The Ontario Insurance Act*, registry may be suspended or cancelled as follows :—Upon proof that any registry or certificate of registry has been obtained by fraud or mistake, or that a corporation exists for an illegal purpose, or has, in terms of section 44, made default of payment, or has wilfully, and after notice from the Registrar, contravened any of the provision of this Act, or has ceased to exist, the registry of the corporation may be suspended or cancelled by the Registrar: section 25 (1) *infra*. And also, if the report of the special auditor, appointed under section 30, *infra*, appears to the Registrar to disclose fraudulent or illegal acts on the part of the society, or a repudiation of its contracts, or insolvency, the Registrar may, after notice to the society, and upon consideration of any statement in answer and other evidence, if any, suspend or cancel the registry of the society: section 31 (1) and (2) *infra*.

Section  
2 (6).

On suspension or  
cancellation of  
registry.

The happening of the following events *ipso facto*, and without notice from the Registry Officer, cancels the registry of the corporation concerned :—

(a) The repeal or the expiry without renewal of its charter, instrument of association, or deed of settlement, or of its Act or Acts of Incorporation; or, (b) the revocation of its corporate powers; or, (c) the cancellation or the expiry without renewal of the license or other document of authority by which the corporation was authorized to exercise its corporate powers in the transaction of insurance; or, (d) the passing of a resolution by the

Section  
2 (6).  
On Wind-  
ing up.

corporation for its winding-up; or, (e) the making of an order by any court for the winding-up of the corporation: section 49 (1) *infra*. Similarly, the happening of any of the following events *ipso facto*, and without notice from the Registry Officer, suspends the registry of the corporation concerned:—(1) The suspension of any of the Acts, instruments or documents mentioned in (a) and (c) above; or, (2) The suspension of the corporate powers of the corporation: section 49 (2) *infra*.

Insurance  
Agents'  
Register.

*Registered or unregistered person.*—A register, known as the Insurance Agents' Register, is directed to be kept by section 38 (5) *infra*. Registration is required of the agents of all corporation licensed or receiving a document of authority from either the Dominion of Canada, or the Province of Ontario, to undertake contracts of insurance against death, sickness, infirmity, casualty, accident, disability or any change of physical or mental condition, and contracts of endowment, assessment endowment, tontine, semi-tontine, life-time benefits, annuities on lives, or contracts of investment involving tontine or survivorship principles for the benefit of persisting members, or any contract of investment involving life contingencies: section 38 (1) *infra*. Agent means any person, not being the chief managing officer of the corporation in Ontario, who, directly or indirectly, acts as insurance agent, sub-agent or broker, or under any other designation, solicits or procures any insurance, or application or proposal therefor for such corporation: section 38 (4). Registry of an agent

is for one year, but may be renewed: section 38 (5) *infra*. The initial registry is granted on the production of a recommendation from the manager of a Canadian or from the chief agent of a foreign insurance corporation legally authorized to transact business in Ontario: section 38 (6) *infra*. If a registered agent is convicted of an offence against the Act, upon proof of such conviction, the Registry Officer shall revoke the registry of the person convicted; and, if the conviction is appealed, the Registry Officer shall suspend the registry; and, if the conviction is affirmed on the appeal, then the Registry Officer shall likewise revoke the registry. The person so convicted is not entitled to apply for revivor of registry for the term of three years from the date of conviction: section 38 (11) *infra*.

Section  
2 (6)-(7).

(7) "Premium" includes any valuable consideration given or promised for insurance.

Premium has been defined to mean the "cost" of insurance. In this Act, however, the meaning of premium is more extensive than "cost," or an engagement to pay cash, but includes any valuable consideration given or promised for insurance, *vide* Commonwealth v. Wetherbee, 105 Mass. 160. Thus, mutual and cash mutual fire insurance companies may undertake contracts of insurance in consideration of premium notes. These undertakings of the assured are from time to time assessed under the provisions of *The Ontario Insurance Act* to meet the losses and expenses of the company: R. S. O. 1887, c. 167, s. 122 (1.) The premium

Premium  
notes

Section  
2 (7)-(8).Member-  
ship fee a  
premium.

payable may be a sum certain or consist of sums uncertain or variable in time, number or amount, as is ordinarily the case in assessment insurance: sections 2 (12); 2 (14) *infra*. In *Regina v. Stapleton* it was held that the joining fee, or membership fee, of *The International Fraternal Alliance* was a premium within the *Insurance Act* of Canada (H. C. J., C. P. Div. Feb. 9, 1892, *per* Galt, C.J., and Rose, J.)

For purposes of section 34 (1) "premium" has the restricted meaning of the net annual premium as shewn in the Hm. Table of the Institute of Actuaries of Great Britain, the rate of interest being taken at  $4\frac{1}{2}$  per cent. per annum: section 34 (2) *infra*.

Contract.

(8) "Contract" means and includes any contract or agreement sealed, written, or oral, the subject matter of which is within the intent of sub-section 12 of this section.

Oral con-  
tracts.

Contracts of insurance made otherwise than by sealed instrument or "policy" were not recognized by the statute law of Ontario until 1882, when the Act, 45 Vic. c. 20, provided that written and oral contracts of fire insurance shall be governed by the statutory conditions. In the Act of 1887 (now R. S. O., 1887, c. 167) "contract," wherever the term occurs, unless the context otherwise requires, includes sealed, written and oral contracts.

Much fire insurance of the mercantile class is now effected by telephone, the oral contract being followed at an interval of some hours, or perhaps days, by a written memorandum (*e.g.* interim



receipt), or by a sealed instrument. When the latter is executed in the particular manner prescribed by R. S. O. 1887, c. 167, s. 110, the company is estopped from denying the contract. The company cannot, however, set up the want of seal: *London Life Ins. Co. v. Wright* 2 S. C. R. 466. An oral agreement with an agent for a policy, the insurance to begin at a certain date, and in case of loss before the delivery of the policy the amount of the loss to be paid, a specified premium to be paid on delivery of the policy, is a completed oral contract of existing insurance prior to the execution and delivery of the policy: *Hardwick v. State Ins. Co.*, 20 Ins. L. J. 751. If a fire claim arises before the oral or written contract has merged in a policy, the claimant is left to the ordinary law of evidence to prove his contract. But the contract once being proved, the statute operates upon it and construes it by the statutory conditions: R. S. O. 1887, c. 167, s. 114); see also, *Palm v. Medina County Mutual Fire Ins. Co.*, Ohio, S. C. 1851, 3 Ben. Fire Ins. Cases 316; *Bain v. Council Bluffs Ins. Co.*, 19 Ins. Law Jour. 258. When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms. All antecedent and contemporaneous oral agreements are merged in the writing. In such case the writing is the sole evidence of the agreement, unless a mistake or imperfection in the writing is put in issue by the pleadings, or when the validity of the agreement is the fact in dispute, *Sawyer et al. v. The Equitable Accident Ins. Co.*, U. S. C. C. 1890, 19 Ins. Law Jour. 711. Where

Section  
2 (8).

Written  
contract.



**Section  
2(8)-(9).**

an acknowledgment of receipt of the premium, contrary to fact, was embodied in and indorsed on the policy, it was held only *prima facie* evidence of payment: *Baker v. Union Fire Ins. Co.*, 43 N. Y. 283. But in a policy of marine insurance, acknowledgment of receipt of premium is ordinarily conclusive of the fact stated: *Arnould, Insurance* 180, 181. The written document may be either an interim receipt, policy, certificate of membership, or other instrument purporting to contain the terms of the contract. For former distinction between interim receipt and policy, see *Parsons v. The Queen*, L. R. 7 App. Cas. 96.

Written.  
Sealed.

(9) As applied to any instrument, "written" means and includes an instrument written or printed, or partly written and partly printed; and "sealed" means an instrument under corporate or other seal.

Compare R. S. O. 1887, c. 167, s. 2 (7).

Printed  
repugnant  
to written  
parts.

Where the written and printed parts of the policy are repugnant, the written part governs. "The words superadded in writing are entitled, if there should be any reasonable doubt upon the sense and meaning of the whole, to have a greater effect attributed to them than to the printed words, inasmuch as the written words are the immediate language and terms selected by the parties themselves for the expression of the meaning, and the printed words are a general formula adapted equally to their case and that of all other contracting parties upon similar occasions and subjects": *per* Lord Ellenborough in *Robertson v. French*, 4 East,

136, followed in *Livingstone v. The Western Assurance Co.* (1868), 14 Gr. 461; see also *Reynolds v. The Commercial Fire Insurance Co.* (N. Y. Court of Appeal, 1873), 2 Insurance Law Journal, 63; *Meagher v. Aetna Insurance Co.*, 20 U. C. Q. B. 607, 11 U. C. C. P. 328; *Benedict v. Ocean Insurance Co.*, 31 N. Y. 389; *Emerigon*, p. 33.

Section  
2 (9) (10).

(10) "Benefit" includes all benefit, bonus and insurance Benefit moneys payable by the corporation under the contract; and "Beneficiary" includes every one entitled to such moneys, and Beneficiary. the executors, administrators and assigns of every one so entitled.

Compare 38 & 39 Vic. c. 60 (Imp.), s. 15 (3); 39 & 40 Vic. c. 55 (Imp.), s. 11 (5).

The payment of the benefit by a mutual benefit society to the beneficiary, or payment of a sick benefit, or permanent disability indemnity, by a society to a member, is not voluntary and in the nature of a gift, but is the fulfilment of a contract of insurance entered into by the member and the society: *Bolton v. Bolton*, 73 Me. 299. "Benefit" includes all moneys payable by the corporation under the contract. The contract must be one within the intent of sub-section 12 of section 2: section 2 (8), *supra*. *Beneficiary*.—The definition is wide enough to include the payee of insurance money under any contract of insurance, but the term is chiefly applicable to contracts of life insurance. "A contract of life insurance necessarily implies an *insurer* and a person whose

Section  
2 (10) (11).

life is *insured*. Inasmuch as the time for performance by the insurer of an ordinary contract of life insurance does not occur until the death of the person whose life is insured, there is commonly a third person interested in the contract as being the person to whom the amount due is to be paid. Such person we designate the "beneficiary": Cooke on Life Insurance, p. 9.

**Maximum.** (11) "Maximum" means the largest sum which, under the contract, the benefit may reach, but may not in any event exceed.

Compare 46 & 47 Vict. c. 47 (Imp.) ss. 3, 4, 6; 50 & 51 Vict. c. 56 (Imp.) s. 5. (1.)

The certificate or contract of a Friendly Society ordinarily contains a provision like one of the following: "That in accordance with, and under the provisions of, the laws governing the order, he (*the member*) is entitled to receive one assessment on the membership, but not over in amount \$1,000, etc., etc.: (Form of certificate issued by *The Great Camp of the Knights of the Maccabees of the World*).—"The conditions being complied with, the Supreme Council of the Royal Arcanum hereby promises and binds itself to pay out of its widows' and orphans' benefit fund, to and  
 , for the benefit of  
 a sum not exceeding \$3,000, in accordance with, and under the provisions of the laws governing the said fund."—"That in accordance with, and under the provisions of the law governing the Order, the sum of \$2,000 will be paid by the Supreme Lodge, Knights of Honor of the World, as a benefit, etc."

The maximum amount so stated or indicated in the contract or certificate is *prima facie* the amount payable by the society to the beneficiary. And the burden of proving that a less amount is the true amount is upon the society: section 41 (1) *infra*. And if the society alleges as a reason for not paying the maximum, that the society's general contract fund, or some other fund, is insufficient, the beneficiary has the right to inspect, personally or by agent, all books and documents relating to the contract fund generally, or the fund alleged to be insufficient: section 46 (1) *infra*. And on the refusal of the society to afford the beneficiary a reasonable opportunity of inspection, the beneficiary may obtain from the Registrar an order to inspect on a day named, and thereafter, neglect or refusal to afford him an opportunity of inspection, is an offence against the Act: section 46 (2) *infra*.

Section  
2 (11) (12).  
Maximum  
amount payable.

(12) "Insurance" includes the following, whether the contract be one of primary insurance, or of re-insurance, and whether the premium payable be a sum certain, or consist of sums uncertain or variable in time, number or amount:—

Insurance.

An exhaustive definition of "Insurance" can hardly be made. Mr. Phillips, Law of Insurance, 5th ed. p. 1 thus defines it:—"Insurance is a contract whereby, for a stipulated consideration, one party undertakes to indemnify the other against damage or loss on a certain subject by certain perils." The definition obviously includes only contracts of indemnity. In attempting to

**Section  
2 (12).**

secure uniformity in treatment American text writers and judges have regarded all insurance, including life, as contracts of indemnity. "Fire insurance is protection against loss by fire, and it is based on the productiveness of the property insured—present or prospective—and the possibility of its destruction by fire. Life insurance is protection against financial loss by death, and it is based upon the productiveness of the person insured—present or prospective—and the absolute certainty that he will die:" Commonwealth v. Wetherbee, 105 Mass. at p. 160. In the law of England, followed by our own courts, life insurance forms a class apart from other insurance contracts. Thus: "Insurance is a contract by which one person, in consideration of a premium, undertakes to indemnify another against a particular loss . . .

Not all  
contracts  
of indem-  
nity.

Contracts of life insurance, however, are not contracts of indemnity; they are contracts to pay a specified sum in a certain event:" Smith, Mercantile Law, 10th ed. p. 394. The leading case is Dalby v. The India and London Life Assurance Co. 15 C. B. 365, in which the doctrine laid down in Godsall v. Boldero, 9 East 72, that insurance being a contract of indemnity, the insured could found no claim upon his policy if the debt or other interest in respect of which he made it were satisfied *aliunde*, was overruled, and it was decided that a life policy, both in form and effect, is an absolute contract to pay a certain sum in the case of death.

*Mutual Benefit Insurance.*—"Whatever may be the motive underlying the great scheme of life insurance, it is certain that, in its practical application, life insurance is, and must be, founded upon contract. Its benevolence must flow, not from mere good will, but from legal obligation. Its gifts must not depend upon the continuance of the charitable impulse of those who shall pay, but upon mutual promises. Although the object of the insurer in making the contract, and the object of the organization with which he contracts are benevolent and not speculative, they have no bearing upon the nature and effect of the business conducted and the contract made. Nor will the character of the contract be changed by the fact that the organization issuing it designates itself as a benevolent or charitable society, instead of an insurance company. The name of the society will not necessarily fix or establish its real character.

Section  
2 (12).

Contracts  
of benefit  
societies.

"If the prevalent purpose and nature of an association of whatever name be that of insurance, its legal character will not be changed by the benevolent or charitable results to its beneficiaries.

"A society which, by contract, agrees to pay the beneficiary of a deceased member a sum of money, is a mutual insurance company, whatever may be the terms of payment of the consideration by the member, or the mode of payment of the sum to be paid in the event of his death:" Niblack, on Mutual Benefit Societies, p. 193, and cases there cited; see also, note under section 2 (10) *supra* and under section 4 (2) *infra*.

**Section  
2 (12).**

*Re-insurance.* The risk which one insurer has assumed with reference to any subject matter of insurance, constitutes an insurable interest which the insurer may protect to the extent of his liability, by effecting an insurance in his own favor against the risk he has assumed. This procuring insurance to cover a risk already assumed is called "re-insurance." The subject matter of the insurance in each case is the same, but the interests are different. In the first case the subject matter of the insurance being property, the owners' interest is that which is protected; in the latter, it is the insurer's interest in the preservation of the property, by reason of the fact that he is under obligation to pay for it in case of loss: May on Insurance, 2nd ed. p. 10. The statute 19 Geo. II. c. 37, prohibited re-insurance unless the re-insured was insolvent, bankrupt or dead. No formal abrogation of the statute has been made, but the statute, so far as the law of Canada, and of Ontario, is concerned, has been virtually repealed by legislative recognition of re-insurance. Thus a company ceasing to do business in Canada, must re-insure all outstanding risks or obtain the surrender of the policies before its deposit is released: R. S. C. 1886, cap. 124, s. 47; and by *The Ontario Insurance Act* the Board of Directors of every insurance company is empowered to make contracts of re-insurance: R. S. O. 1887, c. 167, section 92.

*Premiums uncertain in time, etc.*—When the premium consists of sums uncertain or variable in time, number or amount, the contract is one of

19 Geo. II.  
c. 37, vir-  
tually  
repealed.

BIBLIOTHEQUE DE BRANT

assessment insurance within section 2 (14), *infra*; Section 2 (12) a.  
cf. R. S. C. cap. 124, s. 36.

(a) Insurance against death, sickness, infirmity, casualty, accident, disability, or any change of physical or mental condition; and

With the exception of Ontario Societies already transacting assessment endowment insurance (section 4 (2) C, *proviso (a), infra*), Friendly Societies may undertake with members exclusively, only those contracts of insurance which are included in this group and for the fidelity of members as lodge officers: section 4 (2) C. *infra*; cf. 38 & 39 Vic. c. 60 (Imp.) s. 8 (1).

*Sickness.*—In England the so-called health Health insurance. offices pay weekly sums to certificate holders who are wholly or partially disabled from following their vocations on account of illness not resulting from accident. Sickness insurance may be defined as insurance against loss from incapacity attending ill-health. Sickness includes lunacy: *Burton v. Eyden*, L. R. 8 Q. B. 295; *McCulloch v. Expressmen's Mutual Ben. Asso.*, (Penn. S. C. 1890) 19 Atl. Rep. 355.

*Accident.*—Accident may be defined to be any Accident insurance. unexpected event which happens as by chance or which does not take place in the ordinary course of things: *North American Co. v. Burroughs*, (1871) 69 Pa. St. 43. In accident insurance proper "accident" means a bodily injury happening without the direct intent of the person injured, even though it may be the indirect result of his



Section  
2 (12) a.

intentional act. It, therefore, includes an injury intentionally inflicted by another, also an injury that the negligence of the person injured contributed to produce: *Cooke, on Life Ins.* 79; *Mutual Accident Insurance Association v. Barry*, 131 U. S. 100. The meaning of accident, being so broad, is commonly restricted in insurance contracts. Thus a usual provision has been for insurance against injury occasioned by "external, violent and accidental means"; and excepting "intentional injuries inflicted by the insured or any other person," and also injuries happening from "voluntary exposure to unnecessary danger." But now by section 36 of this Act, *infra*: "In every contract of insurance against accident, or casualty, or disability, total or partial, the event insured against shall be deemed to include any bodily injury either happening without the direct intent of the person injured, or happening as the indirect result of his intentional act, such act not amounting to voluntary or negligent exposure to unnecessary danger."

Statutory  
definition  
of accident

*Disability* may arise from various causes, such as illness, old age, or accident. Where the law of the state enacted that a society may furnish relief to members on account of sickness or other physical disability, and the society made a promise in its contract for relief to members who shall have attained the age of 75 years, it was held that the attainment of such an age is a physical "disability" within the true intent and meaning of the Act: *The Commercial League, etc. v. People ex rel.*, 90 Ill. 166. Total disability may be tem-

Total  
disability.

porary or permanent. Permanent total disability, or total disability for life, means total disability to work for a livelihood: *Dodds v. The Canadian Mutual Aid Association* (1890) 19 O. R. 70; *Hooper v. Accidental Death Ins. Co.*, 5 H. & N. 557. The policy itself sometimes defines permanent total disability, *e.g.* injury to the spine.

Section.  
2 (12) a.

Insurance may be had against a change of mental as well as against a change of physical condition. Thus one partner might effect an insurance on his partner's mental as well as his bodily health. Unless otherwise apparent from the context, the word "insanity" in statutes and contracts means inability to reason and will intelligently: *Johnson v. Maine and N. B. Ins. Co.* 20 Ins. Law Jour. p. 1030.

Change of  
mental  
condition.

(b) Insurance against financial loss; or against loss of work, employment, practice, custom, wages, rent, profits, income, or revenue; and

The contract of insurance, generally, is applicable to protect men against uncertain events which may in any wise be of disadvantage to them: *Lucena v. Crawford*, 2 New Rep. 301. The subject matter of the contract may be the solvability of a debtor; the payment of a note at maturity, *Ellicott v. United States Ins. Co.*, 8 Gill & Johns (Md.) 166; expected profits, the danger of loss by dishonesty; fraud and theft; or, by the non-payment of rent, interest or income; or, by the invalidity of title: *May on Insurance*, 2 ed. 79, 80. A contract for employment at a fixed salary for a certain time gives the employed an insurable inter-

Financial  
loss.

Section 2 (12) b. est in the life of the employer: *Hebdon v. West*, 3 B. & S. 578.

*Chomage*  
insurance.

Under this group of contracts falls *Chomage* insurance, first introduced in France and applied to the insurance of workmen's wages during the time needed for repairs in the event of compulsory stoppage of work by the occurrence of fire. It was subsequently extended to merchants, manufacturers and others, to cover consequential damages arising from the occurrence of fire, not covered by ordinary fire insurance, such as loss of revenue from capital, plant or machinery, etc., caused by destruction of the property of the insured, who may thus hold simultaneously a regular fire policy upon buildings, stock or machinery, and another entirely distinct upon the same property, but based upon the productive value of such property, and the average yearly income derived therefrom, upon which interest at a certain rate per cent. (usually six to ten) is guaranteed by the policy from and after the fire, during such time, as from the circumstances attending the loss, the capital invested may remain totally or partially, yet compulsorily, unavailable to the insured, as in rent or lease policies, which represent the principle exactly. There can be no *chomage* insurance without a corresponding fire insurance upon the property. The amount of *chomage* insurance is always limited to the existing amount of the fire insurance.

This principle is the foundation of mortgagee, rent and lease policies, policies on profits, income or commissions unearned, and insurance of produc-

tion at mills under contracts against failure to fill Section 2 (12) b.  
such contracts, when such failure was caused by  
fire: Griswold, Fire Underwriters' Text Book,  
2 ed., 9.

Tenants have an insurable interest in the rent Rent.  
which they are liable to continue paying after the  
premises are destroyed by fire: Goulston v. Royal,  
1 F. & F. 276. But if the contract of tenancy  
relieves them from liability, they will not have an  
insurable interest. A Trustee has an insurable Trust  
moneys.  
interest in his trust moneys and revenues: Tidswell  
v. Ankerstein, Peake 204.

An insurance may be effected on profits to Profits.  
arise from the sale of goods, provided the insured  
have an insurable interest in such goods: McSwiney  
v. Royal Exchange (1849) 14 Q. B. 646; see also  
Stockdale v. Dunlop, 6 M. & W. 224; Stock v.  
Inglis, L. R. 10, App. Cas. 263. The profits of a  
business may be insured on the principle of their  
forming an additional part of the value of the  
goods, but they must be insured *qua* profits, and  
cannot be recovered merely as an accidental part  
of the loss: Sun Fire v. Wright, 1 A. & E. 621.  
For insurance of profits on an adventure, see  
Wilson v. Jones, L. R. 2, Ex. 139; of profits on  
cargo, see Eyre v. Glover, 16 East 218, Barclay  
v. Cousins, 2 East 546.

Companies in England undertake contracts Other  
insurances.  
insuring the holders of mortgages and other securi-  
ties against loss of principal and interest, and  
other business of a kindred character; insuring

Section  
2 (12) b.

bonds, shares and other securities lodged with the company against risks of all kinds; insuring against loss arising from burglary and theft, from imperfect sanitation, from non-renewal of publicans' licenses; and issue policies to provide sinking funds in connection with leasehold properties.

(c) Insurance of property against any loss or injury from any cause whatsoever, whether the obligation of the insurer is to indemnify by a money payment or by restoring or reinstating the property insured; and

Insurance of property against loss or injury includes fire, marine, live stock and plate glass insurance; also hurricane and hail storm insurance, and steam boiler insurance.

Reinstatement.

It would seem to flow from the contract of insurance being a contract of indemnity that, reinstatement is a fulfilment of the contract. But the right to reinstate does not exist at common law; it rests wholly on statute: Porter, on Insurance, 253. In Ontario, until 50 Vic. c. 26 (O) s. 154 (1), 14 Geo. III, c. 78, s. 83, continued in force, though clashing with statutory condition 18: Carr v. The Fire Assurance Association, (1886) 14 O. R. 487. Since the Act of 50 Vic. the right to reinstate is defined by statutory condition 18, which provides that in case of loss or damage to property included in a policy of fire insurance, the company, instead of making payment, may repair, rebuild or replace, within a reasonable time, the property damaged or lost, giving notice of their intention within fifteen days after receipt of the proofs of loss required by

the statutory conditions: R. S. O. 1887, cap. 167, s. 114 (18). Where the company gives notice of intention to rebuild and fails to do so, the company is liable in damages: *Home Mutual Fire Insurance Co. v. Garfield*, (1871) 5 Bennett 370. In this case the damages were measured by the amount of the policy and interest, and the rental value of the ground during the time of the delay caused by the act of the company. In plate glass insurance, reinstatement is the ordinary fulfilment of the company's obligation. The method generally followed in plate glass insurance is to undertake to make good all breakages, the companies being entitled by way of salvage, to the broken glass.

(d) Contracts of endowment, assessment-endowment, tontine, semi-tontine, life-time benefits, annuities on lives; or contracts of investment involving tontine or survivorship principles for the benefit of persisting members; or any contract of investment involving life contingencies; and

Endowment insurance policies are issued in two general forms: (a) ordinary endowments; (b) limited payment endowments. In an ordinary endowment contract the policy is made payable to the assured in ten, fifteen, twenty, twenty-five, thirty or thirty-five years after the date thereof, provided he be then living to receive the money; or, to his estate, or some beneficiary named, at the death of the assured, should it occur sooner. Premiums must be paid every year, less the dividends, if any, during the entire endowment period selected. For a limited payment endowment the

Section  
2 (12) d.

Endow-  
ment  
insurance.

Section  
2 (12) d.

conditions of the contract are precisely the same, except that the premiums must all be paid in a less time than that named in the policy or the endowment period. For example, a twenty-year endowment may be paid for in ten or fifteen, or even five years, or in one single premium. A special form of endowment contract, known as a reducible term endowment, is undertaken by some companies. The endowment is expressed to be payable at age seventy, or at death, if death occur during the continuance of the policy, and before the completion of the term, but the profits, if any, are applied in extinction of the latest year's premiums, and so on, in order to hasten the termination of the endowment period. Endowment insurance combines insurance with investment; and, according to the point of view, is a contract of insurance simply: *Briggs v. McCullough*, 36 Cal. 550; *Carter v. John Hancock Mutual Life Ins. Co.*, 127 Mass. 153; or a contract of investment involving life contingencies.

The only provision in the Act admitting Friendly Societies to transact endowment insurance is contained in section 4 (2) C. *Proviso* (a), *vide infra*, which provides that upon proof by a Friendly Society duly incorporated, organized and operated under the law of Ontario, or of Canada, before the eleventh day of March, 1890, that the society was at the said date transacting exclusively with its members endowment insurance in Ontario *bona fide*, and has so continued up to the date of application for registry, the Registrar shall have

Assessment  
endowment  
see s. 2 (14)  
*infra*.

authority to admit the society to registry as a Section 2 (12) d. Friendly Society transacting endowment insurance according to the terms of the certificate of registry. But contracts entered into before the passing of the Act are not invalidated: section 4 (2) C. *Proviso* (b), *infra*.

A particular form of endowment insurance has Infant endowment developed in England, and has lately been introduced in Ontario. In England it takes the form of provident assurances for children. A child is insured from birth, or any age up to 14 years, the benefit being payable at and from 21 years, with return of premiums in case of death before 21, or surrender value at discretion. In Minnesota this insurance has taken on the form of an educational endowment with the declared purpose to provide, by means of shares, a common fund or stock, out of which it is proposed to pay at the maturity of the shares an endowment for the benefit of the minor nominated by the shareholder in his application for shares. Different rights accrue to the shareholder, according as the minor survives or does not survive the maturity of the shares. The proposed application of the insurance money to educational purposes does not, of course, alter the nature of the contract under which the insurance money becomes payable. The produce of any ordinary endowment policy may be applied to the education of a child, and a deed of trust may be executed for that purpose by the beneficiary who takes under the endowment policy. The contract is none the less a contract of insurance. Any insurance effected



Section  
2 (12) d.

on the lives of minor children must conform to the requirements of section 35 *infra*.

Tontine  
and semi-  
tontine.

Tontine policies are issued in any usual form, such as ordinary life, limited payment life, or endowment policies. They are issued at the usual rates of premiums, and the only difference between such policies and ordinary policies lies in certain peculiar stipulations. The first stipulation is as follows:—"No dividend shall be allowed or paid upon this policy until the person whose life is insured thereby shall survive the completion of its tontine dividend period, and unless this policy shall then be in force." The period referred to is either ten, fifteen, or twenty years, according to the choice made by the policy-holder in his original application. The effect of this stipulation is that each premium must be paid in full in cash, during the tontine period, without being reduced by dividends. The second stipulation is:—"Previous to the completion of its tontine dividend period, this policy shall have no surrender value in a paid up policy or otherwise." The effect of the stipulations above quoted is to produce savings to the company, first, in not paying out dividends, and secondly, in not issuing paid-up policies in case of lapse. The value of such savings, with their accumulations, is credited to the tontine policies which complete their respective periods.

Semi-tontine policies form a separate variety, being like tontine policies as regards withholding dividends, but enjoying the same privileges as ordinary policies, in case of lapse, as regards paid-up insurance.

An account is kept by the company from year to year of the special savings derived from tontine policies; and a separate amount is kept for semi-tontine policies. To keep in view the equitable rights of each tontine and semi-tontine policy, a provisional account or memorandum of its contributions to the undivided surplus is kept, including its share of special tontine profits, adding interest from year to year at the current rate used in the ordinary dividend calculations. The sum of all these memorandum accounts shows the total tontine surplus of the company. The memorandum thus kept of each policy is subject to future rectification, and is not in the nature of a deposit account, nor does it create any liability different from the duty of every company to distribute in due time its undivided surplus on equitable principles.

As with contracts of insurance generally the relation of a tontine policy-holder to the insurer is that of a creditor, not of a *cestui que trust*: *Bogardus v. New York Co.* (1886) 101 N. Y. 328; *Avery v. Equitable Life Ass. Society* (1889) 117 N. Y. 451. Where the policy contained the term that the company would pay to the plaintiff the sum of \$3,000 together with his full share of all the profits, it was held that the policy holder had no right to call for an account; but he was bound to acquiesce in the discretion of the actuary and directors *bona fide* exercised and to take his share of what is allotted or apportioned as divisible surplus: *Bain v. Aetna Life Insurance Co.*

**Section 2 (12) d.** (1890) 20 O. R. 6 (in appeal; and, in addition to the cases cited there, *Uhlman v. New York Life Ins. Co.* (1888, New York C. A.), 17 Northeast. Rep. 363; but see *contra*, *Pierce v. Equitable Life Assurance Society* (1888) S. J. C. Mass. 18 Ins. Law Jour. 110. In this latter case the policy provided "that all the surplus or profits derived from such policies on the tontine savings assurance plan as shall cease to be in force before the completion of their respective tontine dividend periods, shall be apportioned equitably among such policies as shall complete their tontine dividend periods"; and it was held that the policy holder was entitled to an account.

Survivorship.

In contracts of investment, tontine or survivorship principles are involved for the benefit of persisting members in all cases in which the member must survive to take the benefit or the entire benefit of the contract, *i.e.*, where the benefit is personal to the member himself; and, in the event of his death before the benefit attaches, some advantage accrues to the surviving or persisting members. The intent of clause (f) of this sub-section is wider. It is sufficient to bring a contract of investment within (f) that the payments made by discontinuing members accrue to the benefit of persisting members. Survivorship is not a necessary element; for the benefit may accrue to the legal representatives of the member.

Contracts of investment.

An example of a contract of investment involving life contingencies is the following certificate of a building and loan association:—"The D. B. and

L. Association agree to pay said shareholder or his heirs, executors, administrators or assigns, the sum of \$100 for each of said shares at the end of eight years from date hereof, or in case of his death prior to the expiration of eight years, the association will pay the sum of all monthly instalments paid on this certificate with interest at 5 per cent. per annum, payable in the manner and upon the conditions hereto attached."

Section  
2 (12) c.

Whether the shareholder is entitled to the maturity value of the share, as shown on the face of the certificate, or to the amount of the instalments he has paid thereon improved at interest, depends upon his living until the period of maturity is reached. If the rights of the investor or member under a contract of investment are different according as the member does or does not survive, it is evident that the contract is one that involves a life contingency. Such a contract is a contract of insurance and within the intent of the Act.

(e) Any contract made on consideration of a premium and based on the expectancy of life; or any contract made on such consideration, and having for its subject the life, safety, health, fidelity, or insurable interest of any person, whether the benefit under the contract is primarily payable to the assured or to his nominee or assign, or to his representatives, or to, or in trust for any beneficiary, or to the assured by way of indemnity or insurance against any liability incurred by him, by or through the death or injury of any person; and

Fidelity insurance, in its ordinary sense, is the giving of bonds to employers by insurance companies to indemnify them against pecuniary

Fidelity  
insurance.

**Section  
2 (12) e.**

defaults of employees. Such bonds are made for periods not to exceed twelve months, and the bonds stipulate that the default must occur within the actual period covered by the bond, or by any renewal of the bond, or within a limited period after the expiry of the bond or of any renewal thereof. Usually the period of grace does not exceed three months.

**Employer's  
liability  
insurance.**

This class (e) includes employer's liability insurance, and the insurance of workmen by collective policies against accidents for which the employers are not legally liable. Under one description of policies, employers are indemnified against liability incurred, both under the Workmen's Compensation for Injuries Act up to the limit of three years' wages specified in that statute, and at common law. Such policies also indemnify the employer against all costs incurred in defending actions brought by workmen for injuries sustained in his service. The premiums are calculated on an estimate of the annual wages paid by the employer. Very many accidents which occur during employment are such that no compensation can be recovered against the employer. Joint policies are, therefore, granted to give the full indemnity under the Act and at common law as before mentioned, and also give compensation in all cases of accident during employment for which the employer is not liable. Many employers extend their insurance by joining with their workpeople under this system, so as to provide for every accident during employment. The usual benefits under these joint policies to

employees are one year's wages, limited to a certain amount in case of death, and one-third of the weekly wages (not exceeding twenty-six weeks) during total disablement. The premiums for these policies are paid in full by the employer, who, by arrangement with the workpeople, deducts from their weekly wages their contributions.

Section  
2 (12) f.

(f) Any investment contract under which lapses, or payments made by discontinuing members or investors, accrue to the benefit of persisting members or investors, except where a corporation other than an insurance corporation is expressly authorized to undertake such contract by a statute in force in Ontario; and

A policy is said to "lapse" if the premium is not paid when due. A policy is "forfeited" when one or more of its conditions of non-forfeiture are violated. Certain investment contracts have so far adopted insurance principles that payments made by discontinuing members or investors, accrue to the benefit of persisting members or investors. When this is the case the contract for the purpose of the Act is treated as an insurance contract, except where a corporation, other than an insurance corporation, is expressly authorized to undertake such a contract by a statute in force in Ontario. Thus, a building society may declare forfeited to the society the shares of a member who is in default, or who neglects to pay the number of instalments or monthly subscriptions fixed by any stipulation or by-law: R. S. O. 1887, c. 169, s. 35. A joint stock company, likewise, may forfeit for non-payment of a call any shares whereon such payment is not made, and the shares

Lapses.

**Section  
2 (12) g.**

thereupon become the property of the company:  
R. S. O. 1887, c. 156, s. 23; R. S. C. c. 114,  
s. 41.

(g) Generally any contract in the nature of any of the foregoing whereby the benefit under the contract accrues payable on or after the occurrence of some contingent event.

**Other  
insurance  
contracts.**

The foregoing groups of insurance contracts are not mutually exclusive. A particular contract may fall within two or more of the classes. Likewise, the enumeration of contracts is not exhaustive of all insurance contracts. Where the contract is in the nature of any declared by the preceding classes to be a contract of insurance, and the benefit thereunder is payable on or after the occurrence of some contingent event, the contract is for the purposes of the Act a contract of insurance: cf. R. S. O. 1887, c. 167, s. 2 (4).

**Marriage a  
contingency.**

Marriage is such a contingency, so as to bring the contracts of a society undertaking to pay a sum at marriage of the member within the definition of contracts of insurance.

In one marriage endowment society the object of the society was declared to be "to unite acceptable young people in such a way as to endow each with a sum of money, not to exceed \$6,000, to be paid at marriage or endowment, according to the regulations adopted." The certificate provided *inter alia* "that no member will be entitled to any benefit whatever, who marries in less time than three months from the date of his certificate," and that "every member who shall have been in good

standing for at least three months prior to his marriage, shall be entitled to \$40 per month upon each \$1,000 named in his certificate, for each whole month of his membership, provided that the same shall never exceed \$3,000, or so much thereof as shall be realized from one marriage assessment of all the members of this class"; *held* that the contract is not a marriage brokerage contract, but is void on grounds of public policy as operating in undue restraint of marriage, by offering an inducement for its indefinite postponement: *White v. Equitable Nuptial Benefit Union*, 76 Ala. 251; see also *in re Mutual Aid Association for Unmarried Persons*, 15 Phil. Reports 625; *in re Helping Hand Marriage Association*, 15 Phil. Reports 644. Certain other contracts based upon the probabilities of marriage, are deemed to be wagering contracts, and therefor void. Thus, where an association issued a contract agreeing to pay a certain sum at the end of two years, upon the condition that the member should not marry within that time, or, if he did marry, then to pay him an agreed sum per day for the time he remained single after the contract was entered into, the contract was held to be against public policy and void. Nor had an assignee thereof any better claim: *Chalfant v. Payton*, 19 Ins. Law J. 175.

Section  
2 (12) g.

Contract  
void on  
ground of  
public  
policy.

Insurance terms are terms of art, and the meaning of the parties by the use of particular terms must be ascertained by recourse to contemporaneous insurance literature: *Fuller et al. v.*

Meaning of  
insurance  
terms.



**Section 2 (13).** Metropolitan Life Ins. Co. *et al.* (U. S. C. C. Feb. 1889) 137 Federal Rep. 163.

Insurance corporation.

(13) "Insurance Corporation," or "Corporation" simply, includes any corporation which undertakes, or offers to undertake a contract of insurance within the meaning of the preceding sub-sections.

"Every licensee licensed under or by virtue of *The Insurance Act* of Canada shall be deemed to be a corporation for the purpose of registration": section 6 (2) in part, *infra*. A society duly incorporated under *The Friendly Societies Act*, 1875, (Imp.), or any Act consolidated thereby, or any amending Act thereto, is deemed to be duly incorporated for purposes of registration; proviso under section 10, *infra*. Whether a corporation is within the intent of this Act is seen by the character of the business transacted. If the corporation undertakes, or offers to undertake, contracts within the meaning of section 2 (12) *supra*, then the corporation is an insurance corporation, and subject to the provisions of the Act.

Offering to undertake contracts.

Offering to undertake contracts of insurance includes any setting up of a sign or inscription containing the name of the corporation, or any distribution or publication of any proposal, circular, card, advertisement, printed form or like document, in the name of the corporation, or any written or oral solicitation in the corporation's behalf, or any collecting or taking of premiums of insurance: section 2 (4), *supra*.

"Insurance Fund," or "Insurance Funds," as applied to any Friendly Society within the meaning of sub section 4 of this section, or as applied to any corporation not incorporated exclusively for the transaction of insurance, includes all moneys, securities for money, and assets appropriated by the constitution, by-laws, or rules of the society to the payment of insurance liabilities, or appropriated for the management of the insurance branch or department or division of the society, or otherwise legally available for insurance liabilities.

Section 2 (13).

Insurance Fund or Insurance Funds.

see sec. 1  
sub. a 2  
Page 505  
" 506

When the corporation is not organized exclusively for the transaction of insurance, but a branch or department of the corporation has such insurance in charge, the insurance fund, as above defined, must be kept a distinct and separate fund from the other funds of the corporation; and distinct and separate books, accounts and vouchers must be kept of the insurance fund: section 2 (4) *proviso* (a), *supra*. If the insurance fund of the corporation is held otherwise than as a trust fund for the members, the corporation is not eligible for registration as a friendly society under the Act: section 4 (2) D. *infra*.

Insurance fund a trust fund.

"The insurer" means the corporation undertaking the contract of insurance, or of reinsurance, as the case may be.

The insurer

"The assured" means the person whose property, life, safety, health, fidelity, or insurable interest is insured.

The assured.

"Assurance" and "insurance" have long been used as synonymous terms. Recently, however, "assurance" has been used in England in relation to life contingencies, and "insurance" in relation to other contingencies. It is convenient to describe the person whose insurable interest is insured as the assured, whether the subject matter

Section 2 (14). of the insurance be life or other contingency:  
cf. section 35 (2) *infra*.

Assessment Insurance, or Insurance upon the Assessment system.

(14) "Assessment Insurance," or "Insurance on the Assessment System," includes any contract in which the premium, not being a premium note authorized by any statute in force in Ontario, consists of sums uncertain or variable in time, number or amount; and also any contract whereby the benefit is in any manner or degree made dependent upon the collection of sums levied upon persons holding similar contracts, or upon members of the contracting corporation;

*re page 506*

R. S. C. c.  
124, s. 39.

In assessment insurance, either one or other, or both, of the following elements are present: (i) The premium consists of sums uncertain or variable in time, number or amount. This is true of the corporations authorized to transact assessment insurance under section 39 of *The Insurance Act* of Canada, *vide* section 6 (2) *infra*. (ii) The benefit or insurance moneys payable by the corporation under the contract, section 2 (10) *supra*, is made dependent upon the collection of sums levied upon persons holding similar contracts, or upon members of the contracting corporation. This includes the definition of assessment life insurance companies in *The Insurance Act* of Canada, as a company carrying on business of life insurance by promising to pay on the death of a member of such company a sum of money solely from the proceeds of assessment or dues collected or to be collected from the members thereof for that purpose. Therefore a contract is none the less a contract of insurance, "because the amount to be paid by the corporation is not a gross sum, but a sum graduated by the number of members holding similar contracts; nor

R. S. C. c.  
124, s. 36.

BIBLIOTHEQUE DE LA LOI

because a portion of the premiums is to be paid upon the uncertain periods of the deaths of such members; nor because, in case of non-payment of assessments by any member, the contract provides no means of enforcing payment thereof, but merely declares the contract to be at an end, and all moneys previously paid by the assured, and all dividends and credits accrued to him, to be forfeited to the company": *Commonwealth v. Wetherbee*, 105 Mass. 160; also, *Endowment and Benevolent Association v. State*, 35 Kan. 258; *State v. Mutual Aid Association*, 9 Pac. Rep. 956.

Section  
2 (14).

Insurance on the premium note plan, when such insurance is authorized by any statute in force in Ontario, is not, for purposes of the present provision, assessment insurance. This excludes from the definition the insurance transacted by mutual and cash mutual fire insurance companies: R. S. O. 1887, c. 167, s. 122 (1), and by mutual live stock insurance companies: 52 Vic. c. 33 (O.) s. 61. While in one sense companies transacting business on the premium note plan are transacting assessment insurance, inasmuch as the notes are assessed for the losses and expenses of the company, yet there is a clear distinction between mutual (including fire mutual) companies and companies undertaking contracts within the definition of assessment insurance on the one hand, and between mutual companies and friendly societies on the other. And this distinction, it is proper to observe, although in the United States, mutual insurance is sometimes used as synonymous

Insurance  
on premium  
note  
plan.

**Section  
2 (14).**

Mutual  
Ins. Co.;  
Assessment  
Ins. Co.,  
and Friend-  
ly society.

Policy  
holders'  
liability.

Amount  
payable.

with assessment insurance. In fire mutuals the premium of the assured is the premium note, or his undertaking to pay assessments thereon in the event of loss while the insurance is on foot, or during the currency of the premium note. The assured is liable to the full extent of the face of the note; he may not withdraw: R. S. O. 1887, c. 167, ss. 124, 125; 53 Vic. c. 44 (O.) s. 4. Under the contracts of companies insuring on the assessment plan, the whole amount that the assured may have to pay if he desires to continue the insurance, cannot be fixed beforehand; but the premiums consist of sums variable in time, number or amount, and the liability of the assured, apart from special agreement, is within the control of the assured. He may decline or neglect to pay further assessments, and so he may lapse the policy. The liability of a member of a friendly society, under his contract, at any date is limited expressly to the assessments of which at that date notice has been actually given by the society. By tendering payment of such assessments and giving notice of withdrawal he becomes released from all further liability under his contract: section 39 (1) and (2) *infra*. Again, the amount payable under the contract of the mutual company is not in any way dependent upon the amount realized by the assessment. If the company cannot pay its losses in full, it is insolvent; the license of the company to transact business becomes void, and the company goes into liquidation: R. S. O. 1887, c. 167, s. 46. Assessment life insurance companies under section 38 of *The Insur-*

ance Act of Canada may transact the business of life insurance by promising to pay on the death of a member a sum of money solely from the proceeds of assessments or dues collected from the members for that purpose. If the assessments do not realize the maximum named in the certificate, the claim of the holder abates: R. S. C. c. 124, ss. 36, 37 and 38. Similarly the companies authorized under section 39 of the same Act to transact life insurance on the assessment plan do not contract to pay a sum certain, but are permitted to carry on business so long as the company continues to pay its losses in Canada to the full limit named in its certificates: R. S. C. c. 124, s. 39 (2) and see notes under section 6 (2) *infra*; section 41 (2) *infra*.

Section  
2 (14).

The amount payable under the contract of a friendly society is, likewise, (with perhaps, one or two exceptions) dependent upon the collection of sums levied upon persons holding similar contracts, or upon members of the contracting corporation. The maximum amount indicated in the contract is merely the *prima facie* amount payable by the society: section 41 (1) *infra*.

Mutual companies are required by law to main- Reserve.  
tain a reserve sufficient to reinsure all outstanding risks. In the case of fire mutuals, such reserve may consist of premium notes, but in certain fire mutuals, and in all life mutuals, the reserve must consist in part of cash or cash securities deposited with the Provincial Treasury: R. S. O. 1887, c. 167, ss. 40 (4), 109. If it appear that the com-

Section  
2 (14).

pany be not actuarially solvent, see section 2 (16) *infra*, the authority to transact business is withdrawn: R. S. O. 1887, c. 167, s. 143. While companies transacting life insurance on the assessment plan under the provisions of *The Insurance Act* of Canada, are not required by law to maintain the reserve which is required of ordinary life companies: R. S. C. c. 124, s. 39 (6). Mutual companies are subject to government inspection and audit: R. S. O. 1887, c. 167, s. 140. Assessment companies are not exempt from the provisions of *The Insurance Act* of Canada, relating to inspection: R. S. C. c. 124, s. 37; but, with the exception of foreign assessment companies, are exempt from making the deposit required of ordinary companies: R. S. C. c. 124, ss. 37, 39. There is no government audit or inspection of friendly societies; nor is such a society permitted to make a deposit: see *infra* section 22 (1).

## Deposit.

## Provisos.

Provided, that any assessment insurance undertaken or transacted under the authority of *The Insurance Act* of Canada, shall be deemed assessment insurance for purposes of this Act;

Certain domestic and foreign corporations are empowered under *The Insurance Act* of Canada to transact the business of life insurance on the assessment plan: R. S. C. c. 124, ss. 38 & 39; see, also, section 6 (2) *infra*.

Provided, also, that every application, contract, or other instrument of such insurance, and every circular, advertisement or publication, soliciting insurance issued or used in Ontario for purposes of assessment insurance, shall bear the words "Assessment System" printed or stamped in large type at the head

thereof; and any contravention of this sub-section shall be punishable as for an offence against section 27, all the provisions of which section shall equally apply to an offence committed against this sub-section. Section 2 (14).

This enactment is concurrent with sections 41 and 42 of *The Insurance Act* of Canada. "The words 'assessment system' shall be printed in large type at the head of every policy, and every application for the same, and also in every circular and advertisement issued or used in Canada in connection with the business of a company to which any of the provisions of the five sections next preceding apply": R. S. C. c. 124, s. 41. Section 42 of the same Act imposes a penalty for infractions of section 41.

If the contracts of a friendly society fall within the definition of assessment insurance, as given above, this proviso makes it a statutory duty, binding upon the society and its officers, to have printed or stamped the words "assessment system," in large type at the head of every application, contract or other instrument of such insurance, and also of every circular, advertisement or publication issued or used in Ontario for purposes of such insurance. This provision came into force on the passing of the Act, that is on the 14th day of April, 1892. By their respective Acts of incorporation, the Supreme Court of the Independent Order of Foresters (52 Vic. c. 104 (D.) s. 8) and the Grand Orange Lodge of British America (53 Vic. c. 105 (D) s. 8) are also required to print in legible type and in red ink upon every policy, Friendly Society contracts included.



**Section  
2 (14)-(16).**

The Supreme Court of the I.O.F. and the Grand Orange Lodge of British America.

**Penalty.**

as well as upon every application therefor, and upon every receipt given for payments in connection therewith, the following words: "The insurance undertaken by the society comes under the exception contained in section 43 of *The Insurance Act*, applicable to fraternal and benevolent associations, and is not subject to government inspection." Every officer or other person who transacts business for the society issuing policies or applications for membership on which such notice is not printed, shall on summary conviction thereof, before any two justices of the peace, incur and be liable to the penalties mentioned in s. 22 of *The Insurance Act*, [R. S. C. c. 124,] and every pecuniary penalty so received shall be applied in the manner provided by the said section.

**Maturity.**

(15) "Maturity" of an insurance contract means the happening of the event, or the expiration of the term at which the the benefit under the contract accrues due.

"Benefit," according to the definition, section 2 (10) *supra*, includes all insurance moneys payable by the corporation under the contract.

**Actuarial liabilities.**

(16) "Actuarial liabilities" means the liabilities chargeable against an insurance corporation in respect of its insurance contracts prior to their maturity.

*supra* 519

Before maturity the liability of the corporation under its contracts is contingent. The present value of this contingent liability is ascertained by actuarial rules. For the purpose of determining the actuarial condition of any corporation, the actuarial liabilities of the corporation are treated as present liabilities.

"Actuarial solvency" means the solvency of an insurance corporation when its actuarial liabilities are charged or treated as present liabilities.

Section  
2 (16).

Actuarial  
solvency.

All companies licensed under *The Insurance Act* of Canada, with the exception of assessment life insurance companies, and all companies licensed under *The Ontario Insurance Act* are required to maintain a reserve sufficient to balance their actuarial liabilities: R. S. C. c. 124, ss. 9, 10; R. S. O. 1887, c. 167, ss. 44, 109. The rule for calculating this contingent liability of any company in respect of its insurance contracts varies according to the kind of business undertaken. In fire and inland marine insurance it is the re-insurance value of all risks outstanding in Canada: R. S. C. c. 124, s. 9; or, the re-insurance value of all risks outstanding in Ontario: R. S. O. 1887, c. 167, s. 44, as the case may be. The usual re-insurance valuation by insurance departments is as follows: in fire insurance, the re-insurance value is taken as 50 per cent. of the gross premiums received and receivable; in ocean marine insurance, the re-insurance liability is 100 per cent. of premiums received on risks in force; in casualty insurance, it is 50 per cent. on yearly risks and part of the premiums proportionate to the unexpired time on risks written for a longer term; in fidelity and guarantee insurance, it is 80 per cent. of the yearly premiums on risks outstanding, or 80 per cent. of yearly premiums on court bonds and 50 per cent. of the yearly premiums on the ordinary fidelity business. In life insurance, the re-insurance reserve of companies licensed by the Dominion or by Ontario is based upon a valuation of the

Licensed  
companies.

**Section 2 (16).** policies according to the mortality table of the Institute of Actuaries of Great Britain, interest being taken at  $4\frac{1}{2}$  per cent. per annum, and the pure premiums only being taken. R. S. C. c. 124, ss 25 (10), 33 (7).

**Solvent society.**

"Solvent," as applied to a friendly society, means a society respecting which it has been made to appear to the Registry Officer that the society has no present liabilities apart from actuarial liabilities, or has immediately realizable assets adequate to discharge its present actual liabilities.

So also section 10 (2) *infra*.

**Insolvency.**

Insolvency in the case of registered friendly societies means failure to pay an undisputed claim on an insurance contract for the space of sixty days after being legally payable, or, if disputed, after final judgment, and of a legal valid discharge: section 44 (1) *infra*; see also section 25 *infra*. A friendly society, while not required to maintain a reserve necessary to balance its actuarial liabilities, may include in its annual statement to the Registrar a valuation made by a competent actuary, and verified by his oath, of any or all of the contingent liabilities of the society: section 22 (1) *infra*.

**Friendly society.**

**Reserve fund.**

It is a matter of the internal regulation and management of the society what funds are established and for what purpose, and a court will not inquire whether it is necessary to establish other funds and plans of insurance, for the protection of the members and their beneficiaries, in addition to those already established in the society; nor will a court restrain the officers of the society in the creation and dispensation of a fund which such

society has, within the proper objects of its existence, provided for: Stadler *et al* v. I. O. B'nai B'rith, 3 Am. Law Record, 589. Where a society is not inhibited by the declaration of purposes or by its charter, it undoubtedly has a right to provide in its by-laws and contracts for the accumulation of a reserve fund: cf. sections 17 (3) and 29 (2) *infra*. The idea of a reserve fund imparts permanency to some extent, and, if losses were required to be paid out of this fund as they occurred, the fund would soon be depleted and destroyed; the very object for which it was created would be defeated. A member cannot, therefore, insist that the amount of money held in the reserve fund be applied to the payment of losses before he shall be required to pay an assessment. The officers of the society may use a part, or all of the fund, to pay death losses, but they cannot be compelled to do so. It is in their discretion to hold the reserve fund and levy an assessment: Crossman v. Mass. Mutual, etc., 9 N. E. Rep. 753.

Section  
2 (16)-(17).

(17) "Collector" includes every officer, agent or person receiving pay, however remunerated, who by himself or by any deputy or substitute collects premiums, fees, assessments or other moneys for a corporation. Collector.

Compare the definition in 38 & 39 Vic. c. 60 (Imp.) s. 4. In England it has been found that such functionaries have in numerous cases acquired such a control over the society, as ultimately to convert it into their personal property. It is enacted, therefore, *infra*, that "the books used by any collector for recording moneys received for

Books  
belong to  
society.

Section  
2 (17)-(20).

the society, shall be the property of the society, nor shall any collector or officer, or employee of the society have in these or in any other of the books of account, or record, any ownership or proprietary right, or right of lien, whatsoever: section 30 (4) in part, *infra*. Moreover, any corporation which in effect is the property of the officers or collectors thereof, is deemed to be a corporation required by law to be licensed for the transaction of insurance: section 4 (2) D. *infra*.

Officer.

(18) "Officer" extends to any trustee, treasurer, secretary or member of the committee of management of a corporation or person appointed by the corporation to sue and be sued in its behalf.

This definition follows the definition in 38 & 39 Vic. c. 60 (Imp.) s. 4.

Rules.

(19) "Rules" means and includes provisions of the constitution and rules or regulations, or resolutions or by-laws in force for the time being.

Compare 38 & 39 Vic. c. 60 (Imp.) s. 4.

Head  
Office.

(20) "Head Office" means the place where the chief executive officers of an insurance corporation transact its business.

A corporation carries on its business in the place where its chief office is situate; and the corporation is domiciled or resident at the place where its chief office is situate, *Jones v. Scottish Accident Insurance Company*, L. R. 17 Q. B. D. 421; see also, *Shields v. Great Northern Ry. Co.*, 7 Jurist N. S. 631. Where any corporation applying for registry has its head office elsewhere than in Ontario, its application for registry must be accompanied by a power of attorney from the corporation

Represent-  
ed by  
attorney.

to an agent resident in Ontario: section 14 (1) *infra*. (See form in Appendix). Section  
2 (21)-(23).

(21) "Chief Agency" means the principal office or place of business in Ontario of an extra-provincial corporation undertaking insurance in Ontario. Chief  
Agency.

Compare the definition in *The Insurance Act* of Canada: "The expression 'chief agency' means the principal office or place of business of the company in Canada," R. S. C. c. 124, s. 2 (f.)

The power of attorney from the corporation to an agent resident in Ontario, must declare at what place in the Province the chief agency of the corporation is or is to be established: section 14 (2) *infra*.

(22) "Due application" includes such information, evidence, and material as the Registry Officer shall require to be furnished; and also the payment to the Provincial Treasurer of the fees hereinafter prescribed in respect of any application, certificate or document required or issued by virtue of this Act. Due appli-  
cation.

Applications for registry, are to be made according to a form supplied by the Registry Officer on request: section 12 (1) *infra*. There are three Registers under this Act: the Insurance License Register, the Friendly Society Register, and the Insurance Agents' Register. A special form of application for registration on each Register is in use. For the forms of application, *vide* Appendix. For the tariff of fees, *vide* section 62, *infra*.

(23) "Upon proof" as applied to any matter connected with the registry of a corporation or person, or with the registration of any matter or thing required by this Act to be registered, means upon proof to the satisfaction of the Registry Officer. Upon  
proof.

Section  
2 (23).

The Registry Officer may require to be made, and may take, or receive, affidavits or depositions, and may examine witnesses upon oath : section 7 (2) and 11 (2) *infra*.

NONE BUT REGISTERED CORPORATIONS TO TRANSACT  
INSURANCE.

Nounlicen-  
sed corpor-  
ation to  
undertake  
insurance.

see page 5-13

3. After the 31st day of December, 1892, no insurance, other than as enacted by and for the purposes of *The Land Titles Act* shall be transacted or undertaken in Ontario except by a corporation duly registered as herein provided.

By *The Ontario Insurance Act* it was declared unlawful for companies other than those licensed by the Provincial Treasurer, or by the Dominion of Canada, and benevolent, provident, industrial, or co-operative societies not requiring a license before the passing of the said Act, to undertake contracts of insurance: R. S. O. 1887, ss. 2 (6), 3, 55.

Similarly, by *The Insurance Act* of Canada no unlicensed company or person might transact the business of insurance. From this enactment are, likewise, excepted certain societies or associations.

31st Dec.  
1892

Under the cloak of the exception various organizations have claimed the right to undertake contracts of insurance. After the 31st day of December, 1892, however, no insurance can be lawfully transacted or undertaken in Ontario except by corporations duly registered under this Act. The various contracts described in sub-section 12 of section 2, *supra*, are included in "insurance."

Corporation does not include person, section 2 Section 3. (13) *supra*; but every Dominion licensee is deemed to be a corporation for the purpose of registration. Unauthorized transaction of insurance renders the corporation, its officers and agents liable to penalties, section 27, *infra*, see also section 60; and in any trial or proceeding under the Act, the burden of proving registration is upon the corporation or person charged: section 27 (5) *infra*. The only exception to this general enactment is the case of the assurance fund formed under *The Land Titles Act*, for the indemnity of any person who may happen to be deprived of land Land Titles Act. or some estate or interest therein, by reason of the land being brought under the provisions of *The Land Titles Act*, or by the registration of some other person as owner of the land, or of such estate or interest therein, or by reason of any misdescription, omission or other error in a certificate of title, or in any entry in the register: R. S. O. 1887, c. 116, s. 109.

A certificate under the hand of the Registry Proof of registry. Officer and the seal of his office, that on a stated day the corporation or person mentioned therein stood registered or did not stand registered within the meaning of this Act, or that the registry of any corporation or person was originally granted, or was renewed, or was suspended, or was revived, or was revoked, or was cancelled on a stated day, is *prima facie* evidence in any court or elsewhere of the facts alleged in the certificate: section 26 (5) *infra*.



Section  
3.  
Illegal  
insurance.

Unauthorized insurance is illegal and penalties are imposed thereon. The enactment of a penalty avoids the contract, the making of which is visited with a penalty: Smith on Contracts, 253. If an illegal insurance be effected, the parties being *in pari delicto*, the assured cannot recover in the event of loss, nor can he recover the premiums paid: Alkins v. Jupe, L. R. 2 C. P. D. 375; see also Andree v. Fletcher, 3 T. R. 266; Cope v. Rowlands, 2 M. & W. 149, 157; Perry v. Newcastle District Mutual Fire Insurance Co., 8 U. C. R. 363. If the company to which a note is given for a premium is not duly authorized to transact insurance, the company cannot enforce payment: Lycoming Fire Insurance Co. v. Wright, 55 Vt. 526. Or if on other grounds the contract was an unlawful one, the company cannot recover on a promissory note given for a premium: Russel v. De Grand, 15 Mass. 35; Heller v. Crawford, 37 Ind. 279. If the risk has been run and no loss occurred, the assured cannot recover the premium paid. For the contract has been executed and the parties are *in pari delicto*: Lowry v. Bourdieu, 2 Doug. 468; Patterson v. Powell, 9 Bing. 326, 620; see also Herman v. Jeuchner, L. R. 15 Q. B. D. 561. If the risk has not been run and the contract continues executory, the assured may, notwithstanding the illegality of the contract, obtain a return of the premium: Lowry v. Bourdieu, 2 Doug. 468. The assured should give notice to the insurer of his intention to abandon the contract: Palyart v. Leckie, 6 M. & S. 290.

Lawful contracts entered into before the passing of the Act are not invalidated: section 4 (2) C. proviso (b), *infra*; nor is a resident of Ontario prevented from contracting abroad for insurance with, and sending his premium to, a foreign unregistered corporation. The *locus contractus* being without the jurisdiction the contract is not subject to the Act. Neglect to register on the part of insurance corporations, incorporated by or by virtue of a statute of Ontario, constitutes, *ipso facto*, the treasurer or other proper officer interim receiver, section 53 (1), *infra*; and, by the procedure provided in the Act the assets are realized, the liabilities discharged, and the surplus distributed among those entitled: section 56, *infra*.

Sections 3-4 (1).

Existing contracts are not invalidated.

Neglect to register.

## THE CORPORATION REGISTERS.

### 1. Two registers shall be opened and kept as follows:

Two registers to be kept

(1) A register of corporations licensed to transact insurance by license issued either under *The Ontario Insurance Act*, or under *The Insurance Act* of Canada, and registered under this Act; this register, which may be known as "The Insurance License Register," shall be kept in the office and under direction of the Inspector of Insurance.

Insurance License Register.

Entries on the Insurance License Register are: The names of the corporations found by the Registry Officer legally entitled to register; the term for which the registry is to endure, ending not later than the 30th day of June next ensuing, except in the case of licensees of the Dominion of Canada; the place where the head office, and chief agency, if any, are situate; the name and

Entries on register.

**Section  
4 (1).**

address of the chief agent, if any; the kind or character of insurance for which the corporation is registered; and, if during the term, its registry has been suspended or revived, or revoked, or cancelled, the date and authority for such suspension, revivor, revocation, or cancellation: section 18 (1), *infra*. A copy or an extract from the Register, certified by the Registry Officer to be a true copy or extract, and sealed with the seal of his office, is *prima facie* evidence of the same legal effect as the original in any court or elsewhere: section 26, ss. (6) and (7), *infra*.

**Licenses  
of Ontario**

Insurance licensees of the Province of Ontario are entitled, on the issue or renewal of their licenses, to be registered upon the Insurance License Register without additional charge: section 5 (1) *infra*. The license issued to Provincial licensees specifies the business to be carried on by the company, and expires on the 30th day of June in each year, but is renewable from year to year: R. S. O. 1887, c. 167, s. 57. The year of license and the year of registration, therefore, expire together.

**Licenses  
of Do-  
minion.**

Insurance licensees of the Dominion of Canada, upon due application and proof of such license subsisting, are entitled to be registered on the Insurance License Register: section 6 (1), *infra*. Due application includes the payment of the fees prescribed in Division II of section 62 to the Provincial Treasurer: section 2 (22) *supra*. Renewal of registry is obtained annually by production of the subsisting license or document of authority to the

Registry Officer and paying the prescribed fees : Section  
4 (1).  
section 19 (1), *infra*. The license issued to Dominion licensees specifies the business to be carried on by the company, and expires on the 31st day of March in each year, but is renewable from year to year: R. S. O. c. 124, s. 5. The expiration of the year of license does not, therefore, correspond with the expiration of the year of registry; so the term of registry is made to end with the expiration of the year of license, provided the term of registry does not thereby exceed twelve months: section 18 (1) *infra*.

The duty of determining what companies are, Decision of  
Inspector  
of Insurance. or are not, entitled to registry on the Insurance License Register, and of granting registry accordingly, devolves upon the Inspector of Insurance: section 11 (1), *infra*. The decision of the Inspector is subject to an appeal to a Divisional Court of the High Court: section 51 (2), *infra*. To all corporations registered as above the Inspector of Insurance, as Registry Officer (section 2 (3), *supra*) issues under his hand and seal a certificate of registry, or renewed registry, as the case may be. This certificate sets forth that it has been made to appear to him that the corporation is entitled to registry as an insurance company under the Act; and that the corporation is accordingly registered for the term and for the purposes stated in the certificate: section 18 (2), *infra*.

**Section  
4 (1)-(2)**

Interpre-  
tation.

But for purposes of this Act "license" shall include the document of authority issued under either section 38 or section 39 of *The Insurance Act* of Canada; and "licensed" shall include corporations authorized under either of the said sections to undertake or transact insurance.

For the purposes of the Act "license" includes the document of authority that assessment life insurance companies receive on registration under section 38 of *The Insurance Act* of Canada, as well as the license obtained under section 39 of the same statute. This interpretation follows the definition of "license" in *The Insurance Act* of Canada, R. S. C. c. 124, s. 2 (j), which defines "license" to include certificate of registration. The document of authority granted under section 38 likewise expires on the 31st day of March in each year, but is renewable at the discretion of the Minister: R. S. C. c. 124, s. 38 (2). For an account of the corporations deriving authority to transact insurance under sections 38 and 39 of *The Insurance Act* of Canada, see note under section 6 (2), *infra*.

Friendly  
Society  
Register.

(2) A register of friendly societies authorized hereunder by certificate of registry to undertake insurance contracts, or contracts in the nature of insurance; this register, which may be known as "The Friendly Society Register," shall be kept in the office and under the direction of the Registrar of Friendly Societies."

Entries on  
Register.

The entries on "The Friendly Society Register" are:—The names of the societies found by the Registrar legally entitled to registry; the date of such finding; the term for which the registry is to endure, ending not later than the 30th day of June next ensuing; the place where its head

office, and chief agency, if any, are situate, the name and address of its chief agent, if any; the kind or character of insurance for which the society is registered; and if during the term the registry has been suspended or revived or revoked or cancelled, the date and authority for such suspension, revivor, revocation, or cancellation: section 18 (1), *infra*. A copy or extract from the Register certified under the hand and seal of the Registrar to be a true copy or extract, is *prima facie* evidence of the same legal effect as the original in any court or elsewhere: section 26 (5) and (7), *infra*. Upon registry, the Registrar issues to the society a certificate of registry or of renewed registry, as the case may be. This certificate sets forth that it has been made to appear to him that the corporation is entitled to registry as a friendly society under the Act and that the corporation is accordingly registered for the term and for the purposes stated in the certificate: section 18 (2) *infra*.

Section  
4 (2).

Application for initial registry must be made according to a prescribed form, and be accompanied by such evidence as by its terms the form requires, and such other material and evidence as the Registrar may require. The material required of a friendly society always includes duplicate certified copies of the constitution, laws, rules and regulations of the society, and also of Ontario branches thereof: section 12 (1) and *proviso, infra*. A statement of the financial condition of the corporation, verified by the oath of its officers, must accompany the application: section 13, *infra*. If

Applica-  
tion for  
Registry

Section  
4 (2)

Renewal of  
Registry.

the head office (section 2 (20) *supra*) of the corporation is elsewhere than in Ontario, a sufficient power of attorney to a chief agent in Ontario must accompany the application : section 14 (1), (2) and (3), *infra*. Annually on expiry of the term for which the society is registered, if the society has filed the annual statement required by section 47, and has otherwise complied with the law, the society is entitled to renewal of registry : section 20, *infra*.

Decision of  
Registrar.

The duty of determining what corporations are or are not entitled to registry as friendly societies, and of granting registry accordingly, devolves upon the Registrar of friendly societies : section 11 (1), *infra*. In any disputed case the Registrar renders his decision in writing ; and a copy of his decision under the seal of his office is delivered to the society : section 50 (1), *infra*. An appeal lies from such decision to a Divisional Court of the High Court : section 50 (2), *infra*.

Registry  
no war-  
ranty of finan-  
cial basis of  
Society.

The financial basis, or the actual, or the actuarial solvency, or standing of a society is not vouched for or warranted by admission of the society to registration : section 22 (1) *infra*.

#### CORPORATIONS NOT ENTITLED TO REGISTER AS FRIENDLY SOCIETIES.

Reserva-  
tions.

But the following shall not be entitled to register as a friendly society :—

Under *The Ontario Insurance Act* friendly societies and foreign mutual life insurance companies cannot receive license. Unless licensed by



the Dominion, any such corporation, if by virtue of the provisions following, ineligible also to be registered as a friendly society, has after the 31st day of December, 1892, no status in the Province as an insurance corporation, and its contracts are not enforceable in our courts. For example, a foreign society transacting in Ontario, assessment endowment insurance, is not admitted to license under *The Ontario Insurance Act*; nor is such society entitled to register on the Friendly Society Register: section 4 (2), *C. infra*. The joint result of the two statutes, therefore, is to render the business of the society in Ontario unlawful.

Section  
4 (2) A.

(A) Any corporation licensed or required by law to be licensed for the transaction of business as an insurance corporation.  
Corporations requiring insurance licenses.

The law relating to the licensing of insurance corporations is contained in *The Ontario Insurance Act* and in *The Insurance Act* of Canada.

“‘Company’ means and includes any corporation, or any society or association, incorporated or unincorporated, or any partnership, or any underwriter, except as provided by section 3, that undertakes or effects for valuable consideration, or agrees or offers so to undertake or effect, in the Province, any contract of indemnity, guarantee, suretyship, insurance, endowment, tontine, or annuity on life, or any like contract which accrues payable on or after the occurrence of some contingent event:” R. S. O. 1887, c. 167, s. 2 (4).  
The Ontario Insurance Act.  
s. 2 (4)



**Section  
4 (2) A.**

R. S. O. 1887,  
c. 167, s. 2 (6)

“Contract” means and includes any contract or agreement, sealed, written or oral, the subject matter of which is within the intent of subsection 4: R. S. O. 1887, c. 167, s. 2 (6).

s. 55.

“Except companies licensed by the Treasurer, and companies specified in section 3, it shall not be lawful for a company to undertake or effect or solicit, or to agree or offer to undertake or effect, any contract within the intent of section 2, whether the contract be original or renewed; or, to accept, or agree, or negotiate for any premium or other consideration for the contract; or to prosecute or maintain any action or proceeding in respect of the contract, except such actions or proceedings as arise in winding up the affairs of the company under section 7:” R. S. O. 1887, c. 167, s. 55.

s. 3

“The provisions of this Act shall not apply:—

“1. To a company licensed by the Dominion of Canada, except as to sections 114 to 120 inclusive, which shall apply to all fire insurance companies transacting business in Ontario.

“2. This Act shall not apply to any corporation standing registered on the Friendly Society Register, pursuant to *The Insurance Corporations Act, 1892*:” R. S. O. 1887, c. 167, s. 3, as amended by *The Insurance Corporations Act, 1892*, section 21 (1) *infra*.

Only corporations which are not required by law to be licensed are entitled to registry on The Friendly Society Register: *vide* notes section 4,

(2), s. 8, *infra*. This Act, section 4 (2) D, *infra*, interprets the phrase "required by law to be licensed for the transaction of business" to include any joint stock corporation, or any corporation which in effect is the property of the officers or collectors thereof, or which belongs to any private proprietary, or which has less than fifty members in good standing on its books, or which is conducted as a trading or mercantile venture, or for the purpose of commercial gain, or the insurance funds of which are held other than as trust funds for the members.

Section  
4 (2) A.  
Required  
by law to  
be licensed.

Although certain corporations are thus deemed to be required by law to be licensed for the transaction of insurance, it does not follow that because the corporation requires license, it will receive license. For there is no provision in the law of Ontario for licensing certain insurance corporations, *e.g.* foreign mutual life companies. If any such corporation obtains license from the Dominion of Canada, the license entitles the corporation to registry on the Insurance License Register of Ontario.

Similarly, the Insurance Act of Canada enacts: *The Insurance Act of Canada, s. 4*  
"No company or person, except as hereinafter provided, shall accept any risk or issue any policy of fire or inland marine insurance or policy of life insurance, or grant any annuity on a life or lives, or receive any premium, or carry on any business of life or fire or inland marine insurance, in Canada—or prosecute or maintain any suit, action or proceeding, either at law or in equity, or file any claim in insolvency relating to such business,

**Section  
4 (2) A.**

without first obtaining a license from the Minister to carry on such business in Canada:" R. S. C. c. 124, s. 4.

*The Insurance Act of Canada,*  
s. 33.

"No company shall, without being licensed or registered under this Act, carry on within Canada any business of life insurance by promising to pay on the death of a member of such company, a sum of money solely from the proceeds of assessments or dues collected or to be collected from the members thereof for that purpose:" R. S. C. c. 124, s. 36, *in part*.

s. 49.

"No company or person shall issue any policy other than a life, fire or inland marine insurance policy, or receive any premium in respect thereof, or carry on any business of insurance other than life, fire or inland marine insurance, without permission obtained from the Minister, who, with the approval of the Governor-in-Council, shall determine in each case whether such permission shall be granted, and whether a license is proper or necessary to be issued, and whether any and what deposit shall be required to be made with the Minister, and the sections of this Act which shall apply to such company or person:" R. S. C. c. 124, s. 49, *in part*.

s. 3 (c) as  
amended  
by 51 Vic.  
c. 23 (D), s. 1.

"The provisions of this Act shall not apply:—

"To any company incorporated by an Act of the Legislature of the late Province of Canada, or by the Legislature of any Province now forming part of Canada, which carries on the business of insurance, wholly within the limits of that Province by the Legislature of which it was incor-

porated, and which is within the exclusive control of the Legislature of such Province:" R. S. C. c. 124, s. 3 (c), *in part*, as amended by 51 Vic. c. 28 (D.), s. 1. Section  
4 (2) A.

"Nothing in this Act contained shall apply to any society or association of persons for fraternal, benevolent, industrial or religious purposes, among which purposes is the insurance of the lives of the members thereof exclusively; or to any association for the purpose of life insurance, formed in connection with such society or organization, and exclusively from its members, and which insures the lives of such members exclusively:" R. S. C. c. 124, s. 43. *The Insurance Act of Canada.*  
s. 43.

This exception does not extend to the transaction of insurance other than life insurance. Thus in a case under *The Insurance Act* of Canada on an information "that one C. S. unlawfully did carry on the business of insurance, other than life, fire, and inland marine insurance, that is to say, the business of accident insurance on behalf of *The International Fraternal Alliance*, an insurance company within the meaning of section 2, chapter 124 of the Revised Statutes of Canada, without permission obtained from the Minister of Finance and Receiver-General of the Dominion of Canada, and without the license required by law in that behalf, and contrary to *The Insurance Act*, Revised Statutes of Canada," a conviction was had; held, on a motion for order *nisi* to quash the conviction, that the scheme of the association was not one of "insurance of the lives of the members exclusively," but was a scheme of *The International Fraternal Alliance.*

Section  
4 (2) A.

accident insurance. Also, that the membership fee and receipt therefor, which was agreed to be accepted at any time as payment *pro tanto* for joining fees to be paid to secure benefits, was a premium within section 49 of *The Insurance Act of Canada*: *Regina v. Stapleton*, H. C. J., C. P. Div., Feb. 9, 1892, *coram* Galt, C.J. and Rose, J.

Reg. v.  
Stapleton.

The ex-  
emptions.

Section 43 has been similarly interpreted by the Dominion Department of Insurance on the occasion of various associations claiming the benefit of the exemption therein contained. The kind of business undertaken, as well as the constitution of the association itself, determines whether a particular association has the benefit of the exemption. Thus, for example, where the purposes of the corporation included temporary aid and assistance to Oddfellows holding certificates of membership in the association, in case of temporary or permanent disability resulting from accident, the association was held to be an accident association, and on that ground not within the exemption. In order to claim the benefit of section 43 the association must be engaged in the business of life insurance only, and not in the business of accident and life, or fire and life, or marine and life insurance: see Report Superintendent of Insurance, 1890, p. xxxv.: *re* The Oddfellows' Fraternal Accident Association; *re* Preferred Masonic Mutual Accident Association of America. The constitution of an association comes into question when it is asked:—Is this an association for the purpose of

Life and  
Accident  
insurances

life insurance formed in connection "with a society or organization \* \* \* for fraternal, benevolent, industrial or religious purposes, and exclusively from its members," and which "insures the lives of such members exclusively?" For an association is not within section 43, if it is incorporated without reference to, or without the authority of, or without connection with, the association among whose members it expects to do business: cf. the definition of Branch in section 2 (4) a, *supra*; and see Report Superintendent of Insurance, 1890, on The Oddfellows Fraternal Accident Association; North Western Masonic Aid Association; Preferred Masonic Mutual Accident Association of America; United States Masonic Benevolent Association of Council Bluffs, Iowa; see also State v. Citizens' Benefit Association, 6 Mo. App. 163. So far, therefore, as *The Insurance Act* of Canada is concerned, the several associations above named, and all others of a like character, cannot legally transact insurance in Canada without first complying in all respects with the provisions of *The Insurance Act*, and procuring the necessary license or certificate of registration thereunder.

Section  
4 (2) A-B.

Independent of the  
society.

But any of the above associations, if in other respects within the provisions of this Act, may obtain registry as a friendly society: section 10, *infra*.

(B) Any corporation, except as enacted in section 9, having charge of, or managing, or distributing charity, or gratuities, or donations only.

Or distributing  
charity or  
gratuities  
only.

**Section  
4 (2) B.**

Insurance  
a contract  
not bene-  
volence

Except as enacted in section 9 (*infra*) the Act is not concerned with societies distributing donations or gratuities, but deals only with corporations entering into the contractual relation of insurer and assured with its members. Life insurance was preceded by charitable organizations, whose work was directed to alleviating the frequent distress arising from the death of a husband or father. Then came a transition period when the husband or father of the beneficiary contributed something towards the charitable fund, but no contract was set up. The third stage, which societies originally charitable in their objects have now reached, is the contractual stage—the society and member are now related as insurer and assured. This legal obligation forms the only satisfactory and enduring basis for any enterprise partaking of life insurance. The rights of persons claiming insurance arise out of and depend upon contract and must be ascertained and fixed by contract, regardless of the character of the company, unless there are statutory provisions to the contrary. Even though the object of the company may be benevolent, that does not import a new meaning into the unambiguous terms of a writing. The contract measures the rights of one party and the obligations of the other. *Block et al. v. Valley Mutual Ins. Ass.*, 20 Ins. Law Jour., 555.

A corporation which undertakes contracts in the nature of insurance is not exempt from complying with the provisions of the Act because its

objects are benevolent and not speculative. The character of the contract is not changed by the fact that the organization issuing it designates itself as a benevolent or charitable society. The name of the society will not necessarily fix or establish its real character. If the prevalent purpose and nature of the corporation, of whatever name, be that of undertaking insurance contracts, its legal character will not be changed by the benevolent or charitable results to its beneficiaries. A society which by contract agrees to pay to the beneficiary of a deceased member a sum of money, is an insurance corporation, whatever may be the terms of payment of the consideration by the member, or the mode of payment by the society of the sum to be paid in the event of death: *Commonwealth v. Wetherbee*, 105 Mass. 160; *State ex rel. v. Benevolent Society*, 72 Mo. 146; *State ex rel. v. Benefit Association*; 6 Mo. App. 172; Niblack, on *Mutual Benefit Societies*, § 163, and cases there cited: see also *State v. Merchants' Exchange Mut. Benev. Society*, Mo. Sup. Ct. 1880, 10 Ins. Law Journal, 59. The payment of the benefit by the society to the beneficiary, or payment of a "sick benefit" or "permanent disability indemnity" by the society to a member is not voluntary and in the nature of a gift, but is the fulfilment of a contract of insurance entered into by the member and the society: *Bolton v. Bolton*, 73 Maine, 299.

A society organizing under R. S. O. (1887) c. 172, after the 10th day of March, 1890, has not authority to undertake or effect for valuable con-

Societies  
organized  
in Ontario  
after 10th  
March, 1890



**Section**  
**4 (2) B.**

R. S. O.  
1887, c. 172.

sideration any contract of insurance, indemnity or guarantee whatsoever, with the members of the society or with others, or any contract within the intent of *The Ontario Insurance Act*, or of R. S. O. 1887, c. 136: 53 Vic. c. 39, (Ont.) s. 9. Therefore, (except those societies which have been lawfully incorporated before the 11th day of March, 1891, and which avail themselves of the proviso following, so that their payments become matters of contractual obligation), all societies organized under R. S. O. 1887, c. 172, after the 10th day of March, 1891, are lawfully incorporated for the purpose of bestowing, or distributing, gratuities, or donations only. But a society may not, under cloak of bestowing gratuities, transact insurance. The law will, when occasion requires, look behind the names of societies and pass its judgment upon their schemes and modes of business: *Governors, etc. v. Am. Art Union*, 7 N. Y. 228; *State ex rel. v. Graham*, 66 Iowa, 26.

Provided that where before the 11th day of March, 1891, a corporation was incorporated under the *Act respecting Benevolent, Provident and other Societies*, for the purpose of bestowing gratuities at death or on the happening of sickness, infirmity, casualty, accident, disability, or any change of physical or mental condition, and it is in the opinion of the Registrar desirable that such payments should be made matter of contractual obligation, the corporation may, for this purpose, amend its constitution and laws as shall be directed by the Registrar, under his hand and the seal of his office; and if, within the time limited in the Registrar's direction, the corporation files in the office where the original declaration of the corporation was filed, the said direction, and a declaration, verified by the oath of its secretary or other proper officer, setting out the amendment so

directed and made in the constitution and laws with the date of the said amendment, then upon proof of such filing the Registrar may admit the corporation to registry as a friendly society. Section 4 (2) B.

Compare proviso to sub-section 2 of section 8, *infra*.

*see page 513*

It is undesirable that any scheme of insurance should rest on the discretion and not on the obligation of the insuring corporation to pay the benefit held out by the scheme to the members. Therefore, a society which was, before the 11th March, 1891, lawfully organized under *The Act respecting Benevolent, Provident and other Societies*, for the purpose of bestowing gratuities on the happening of death, sickness, infirmity, casualty, accident, disability, or change of mental or physical condition may, on conversion of its gratuity scheme into contractual obligation between the society and its members, as above provided, be admitted to registry as a friendly society. If such conversion be not made, the society is not entitled to registry. But a corporation, like the Toronto Board of Trade, 49 Vic. c. 56 (D.), ss. 6, 7 and 8, being within sub-section 4 of section 9, *infra*, may, although its benefits rest in donation and not in contract, register as a friendly society; but such a corporation is not compellable to make such registry: sections 4 (2) B. *supra*, and 9 (4) *infra*. A society's power of changing any of the purposes contained in the original certificate or declaration of incorporation by an order of a judge, as provided by section 19 of chapter 172 of the Revised Statutes, was thus restricted by 53 Vic. c. 39, s. 9:—

Conversion  
of gratui-  
ties and  
contracts.

R. S. O.  
1887, c. 172,  
s. 19, as  
amended  
by 53 Vic.  
c. 39, s. 9.

Section  
4 (2) C.

"Provided also that no company, society, association, or organization incorporated under this Act on or before the said 10th day of March [1890], and not authorized by its original certificate or declaration of incorporation to undertake such contract as aforesaid, [viz., 'any contract of insurance, indemnity, or guarantee whatsoever, with the members of the corporation, or with others, or any contract within the intent of *The Ontario Insurance Act*, or of chapter 136 of these Revised Statutes,'] shall, by virtue of section 19 of this Act or otherwise, have authority to change the purposes of the corporation so as to include the undertaking of such contracts as aforesaid."

By section 63 (2) *infra*, "All Acts or parts of Acts inconsistent with this Act are hereby repealed." The sub-section we are considering prevails therefore over the prohibition contained in 53 Vic. c. 39, s. 9.

Corpora-  
tions  
undertak-  
ing other  
than cer-  
tain con-  
tracts.

(C) Any corporation undertaking or offering to undertake insurance other than contracts of insurance made exclusively with its own members against sickness, accident, disability, infirmity or old age, or for mortuary or funeral benefits, or for the fidelity of members as financial officers of the society or any branch or lodge thereof, or for a sum or for collective sums not exceeding \$8,000 in all, payable at the death of the assured.

The insurance that a friendly society may undertake is limited to the contracts of insurance specified in the clause and made with its own members exclusively. The only societies that may transact *assessment endowment* insurance are such as fall within the proviso to this clause (*vide infra*).

Qualification for membership in a friendly society ought to involve something more than fulfilment of insurable conditions of age and health. Nor should membership consist merely in the payment of an insurance premium. For where membership consists solely in an application for insurance which is accepted, the corporation is not one that undertakes insurance with its own members exclusively: *State v. Citizens' Benefit Association*, 6 Mo. App. 163.

Section  
4 (2) C.  
Insurance  
with  
members  
exclusively

As to the limitation, \$3,000: cf. section 11 of the Benevolent Societies Act:—

“When on the death of a member of a society, any sum of money becomes payable under the rules of the society, the same shall be paid by the treasurer or other officer of the society to the person or persons entitled under the rules thereof, or shall be applied by the society as may be provided by such rules; and such money shall be, to the extent of \$2,000, free from all claims by the personal representatives or creditors of the deceased”: R. S. O. 1887, c. 172, s. 11, in part.

Not exceed-  
ing \$3,000  
Cf. R. S. O.  
1887, c. 172,  
s. 11.

In the case of insurances for the benefit of any of the persons within the protection of R. S. O. 1887, c. 136, s. 5, the whole sum of \$3,000 would now be free from the claims of creditors: for section 37 (1) *infra* provides that that Act “shall apply to all lawful contracts for insurance made by friendly societies registered under this Act;” and section 63 (2) *infra* repeals all prior inconsistent enactments. See *Mingeaud v. Packer*, 21 O. R. 267; in this case, on appeal to the Court of Appeal, the

**Section  
4 (2) C.**

court was equally divided (May 10th, 1892), and the appeal was therefore dismissed. See also notes under section. 37 (1) *infra*.

Cf. 52 Vic.  
c. 104 D), s. 1  
(e), and 53  
Vic. c. 105  
(D), s. 1(e).

The respective Acts of incorporation of the Supreme Court of the Independent Order of Foresters and of the Grand Orange Lodge of British America limit the insurance which the society may undertake to a sum not exceeding \$3,000.

**Proviso.**

Provided (a), that upon proof by a friendly society duly incorporated, organized and operated, under the law of Ontario or of Canada, before the eleventh day of March, 1890, that the society was at the said date transacting exclusively with its members endowment insurance in Ontario *bona fide*, and has so continued up to the date of application for registry, the Registrar shall have authority to admit the society to registry as a friendly society transacting endowment insurance according to the terms of the certificate of registry.

For endowment and assessment endowment insurance, see section 2 (12) (d) and notes, *supra*.

What  
endow-  
ment soci-  
eties  
ineligible.

So far as friendly societies are concerned, endowment insurance may be transacted in Ontario only by societies incorporated before the 11th day of March, 1890, which were at that date and continuously up to the date of application for registry, transacting exclusively with members endowment insurance in Ontario *bona fide*. Therefore a friendly society incorporated elsewhere than in Ontario or Canada, or which was incorporated therein after the 10th March, 1890, or which was not transacting such insurance on the said date and since, or which is transacting such insurance with others than members, is not entitled

to registry and so cannot lawfully undertake such contracts. And even if otherwise entitled, the right of the society to registry may be lost by the organization being within section 4 (2) *D infra*. Nor can any existing society not already transacting endowment insurance, nor can any new society, enter on the business of endowment insurance.

Section  
4 (2) C.

Endow-  
ment  
insurance.

Where a benevolent society with an endowment fund is prohibited from prosecuting business in its own state, it cannot organize a new company elsewhere and use such fund to re-insure the members without their consent. The latter may apply to the court to compel a winding up and distribution of the funds: *Stamm et al. v. Northwestern Mutual Benefit Association*, Mich. S. C., 19 Insurance Law Journal, p. 348 (April, 1890).

Provided (b), That contracts entered into before the passing of this Act shall not hereby be invalidated.

Existing contracts are not invalidated but are in the same position as if the Act had not passed. But the society may not enter into new contracts, nor preserve its organization in Ontario to receive or collect premiums (section 2 (4) *supra*), or transact any other business relating to the insurance. As to contracts made with foreign corporations if the member desire to keep his contract on foot, the assessments or premium must be remitted by him to the head office of the company.

**Section  
4(2) D.**

Or being  
proprietary or  
trading  
societies  
or having  
under fifty  
members;  
or where  
the funds  
of the soci-  
ety are not  
held in  
trust for  
members.

(D) Any joint stock corporation, or any corporation which in effect is the property of the officers or collectors thereof, or which belongs to any private proprietary, or which has less than fifty members in good standing on its books, or which is conducted as a trading or mercantile venture, or for purposes of commercial gain, or the insurance funds of which are held other than as trust funds for the members; and each and every such society shall be deemed to be a corporation within the meaning of sections 5 and 6 of this Act, required by law to be licensed for the transaction of insurance.

Joint stock  
company.

A joint stock company may be defined as a company having a permanent paid-up or nominal capital of fixed amount, divided into shares; also of a fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of shares in such capital, or the holders of such stock, and no other persons: The Companies Act, 1862, (Imp.), s. 181. Every such company is deemed to be required by law to be licensed in order to transact insurance.

Mutual  
Insurance  
Company.

A mutual insurance company is formed on the principle of having for its members its policy holders, and its policy holders are alone the owners of the common fund, and they and they alone are entitled to the management of the common fund: *New York Life Insurance Co. v. Styles* (1889), L. R. 14 App. Cases, at 409. Where a share capital exists in a mutual company organized, or operated, under *The Ontario Insurance Act*, R. S. O. 1887, c. 167, ss. 30 *et seq.*, the shareholders are members of the company and enjoy special powers of control.



If a society is in effect the property of the officers or collectors of the society, or belongs to a private proprietary, the society is deemed to be a corporation required by law to be *licensed* for the transaction of insurance. Officer has the extended meaning in the definition: section 2 (18); and collector likewise has the meaning in section 2 (17) *supra*: compare section 8 (2) *infra*.

Section  
4 (2) D.

Proprie-  
tary  
society.

If the corporation has less than fifty members in good standing it is not entitled to register as a friendly society. But if the corporation, not being within section 9, was organized elsewhere, than in Ontario, it must have at the date of application a membership of at least 500 *bona fide* residents of Ontario to be entitled to register as a friendly society: section 10 (1), *infra*.

Number of  
members.

A corporation, however or wherever organized, which is conducted as a trading or mercantile venture, or for purposes of commercial gain, is not entitled to register as a friendly society. In a *quo warranto* proceeding, instituted to determine whether an alleged benevolent society was an insurance company doing business contrary to law, the distinction was laid down that an insurance company is a mere business venture, whose dominant feature it is to grant indemnity against loss for a pecuniary consideration; but that the underlying feature of the benevolent society is not to indemnify against loss but to provide a fund from the accumulations of its members for their relief in case of misfortune: *Commonwealth v. Equitable Benefit Association*, 19 Ins. L. J. 340.

Corpora-  
tion for  
purpose of  
commercial  
gain.



Section  
4 (2) D.

A society incorporated under R. S. O. 1877, c. 167, and undertaking insurance contracts with its members, has been held not to be engaged in a trade or business: *Swift v. Provincial Provident Institution*, 17 A. R. (1890), p. 66. But, a mutual insurance company, as distinguished from a friendly society, is a mercantile corporation: that is, it is engaged in dealing in mercantile contracts, although it may be that the dealing is with a restricted class of customers. The mutual insurance company has no other object or function than dealing in contracts: *in re Padstow Total Loss and Collision Assurance Association*, L. R. 20 Ch. D. (1882), 137; *ex parte Hargrove & Co.*, L. R. 10 Ch. App. 542. In *State v. Citizens Benefit Association*, 6 Mo. App. 163, it was held that a corporation with salaried officers, paying commissions on risks obtained, insuring and admitting to membership anyone having the requisite conditions of age and health, and requiring no other qualification for membership, cannot evade the insurance laws by calling itself a benevolent society, and obtaining a charter as such: see also *Governors v. American Art Union*, 7 N. Y. 228; *State ex rel v. Graham*, 66 Iowa 26.

The Insurance fund  
a trust  
fund.

The insurance funds of the society include all moneys, securities for money and assets appropriated by the rules of the society to the payment of insurance liabilities or expenses of management of the insurance branch of the society, or that are otherwise available for insurance liabilities: section 2 (13) *supra*. If the insurance funds of a

society are held other than as trust funds for the members, the society is not entitled to registry on the Friendly Society Register. Sections 4 (3), 5 (1).

(3) The section shall take effect on the 1st day of July, 1892. Com-  
mence-  
ment of  
section.

Unless an extension of time be granted for same by the Registry Officer, corporations transacting insurance in Ontario at the passing of the Act must make and complete due application for registry on or before the 30th day of June, 1892: section 12, *infra*. The registers are, therefore, considered as opened on the 1st day of July, 1892.

#### LICENSED COMPANIES.

5. (1) Insurance licensees of the Province of Ontario shall be entitled on the issue or the renewal of their licenses to be registered, without additional charge upon the Insurance License Register, and the fact of such registration shall before delivery over of the license, original or renewed, be endorsed thereon. Insurance  
licensees  
of Ontario  
how regis-  
tered.

The license granted to an Insurance Company under the provisions of *The Ontario Insurance Act* expires on the 30th June in each year, but is renewable from year to year, R. S. O. 1887, c. 167, s. 57; so also of mutual live stock companies licensed under 52 Vic. c. 33. Insurance licensees of Ontario need not make application for registry under this Act; for the company is registered on the Insurance License Register, and the fact of such registry is endorsed on the license or renewal of license before delivery over of the same to the company. No additional fee is

Section  
3 (2).

demand of such a company for the further authorization.

Suspension or cancellation or non-renewal of Provincial license.

(2) Suspension or cancellation or non-renewal of the license issued under *The Ontario Insurance Act* shall, *ipso facto*, and without notice from the Registry Officer, operate in the respective cases as suspension or cancellation of registry under this Act.

R. S. O.  
1887, c. 167,  
c. 44.

Section 44 of *The Ontario Insurance Act* enacts that "if from the annual statements, or after examination of the affairs and condition of any company, it appears that the reinsurance value of all its risks outstanding in Ontario, together with any other liabilities in Ontario, exceeds its assets in Ontario, including the deposit, in the hands of the Treasurer, then the company shall be called upon by the Treasurer to make good the deficiency at once, and, on failure so to do, its license shall be cancelled. \* \* \*

*Ibid.* s. 46.

And in section 46 of the same Act, there is a further provision for the cancellation of the license. "When a company fails to make the deposits under this Act at the time required, or where written notice has been served on the Provincial Treasurer of an undisputed claim arising from loss insured against in Ontario remaining unpaid for the space of sixty days after being due, or if a disputed claim after final judgment in a regular course of law and tender of a legal valid discharge being unpaid, so that the amount of securities representing the deposit of the company is liable to be reduced by sale of any portion thereof, the license of the company shall *ipso facto* be null and void, and shall be deemed to be cancelled as in section 44; but the license may,

in the two last mentioned cases be renewed, and the company may again transact business, if within sixty days after notice to the Provincial Treasurer of the company's failure to pay any undisputed claim, or the amount of any final judgment as provided in this section, such undisputed claims or final judgments upon or against the company in Ontario, are paid and satisfied, and the company's deposit is no longer liable to be reduced below the amount required by this Act:" compare sections 44 and 49 *infra*.

Section  
5 (2).

The mode of suspending or cancelling the license, on report of the Inspector, is found in section 143 of *The Ontario Insurance Act*: *Ibid.* s. 143.

"(1) If it appears to the Inspector that the assets of any company are insufficient to justify its continuance of business, or unsafe for the public to effect insurance with it, he shall make a special report on the affairs of the company to the Treasurer."

"(2) After full consideration of the report, and a reasonable time being given to the company to be heard, and if, after such further inquiry and investigation (if any), as he may see proper to make, the Treasurer reports to the Lieutenant-Governor in Council that he agrees with the Inspector in the opinion expressed in his report, then, if the Lieutenant-Governor in Council also concurs in such opinion, an Order in Council may issue, suspending or cancelling the license of the company and prohibiting the company from doing

Sections  
5 (2), 6 (1).

any further business, and thereafter it shall not be lawful for the company to do any further business in Ontario, until the suspension or prohibition is removed by the Lieutenant-Governor in Council."

The cancellation or suspension of the license operates *ipso facto* to make the treasurer or other officer of the corporation having custody or control of the insurance funds of the corporation *interim* liquidator, and the liquidation proceeds according to the provisions contained in this Act: *vide infra* section 53 *et seq.* Such liquidation is in lieu of the proceedings that might have been taken under sections 7 or 151 of *The Ontario Insurance Act*.

Insurance  
licensees of  
Canada,  
how regis-  
tered,

6. (1) Insurance licensees of the Dominion of Canada shall, upon due application, and upon proof of such license subsisting, be entitled to be registered on the Insurance License Register.

Due application includes payment to the Provincial Treasurer of the fees prescribed: section 2 (22) *supra*. The scale of fees applicable to corporations within this clause will be found in section 62, division II, *infra*. The application for initial registry is to be made on a form that is supplied by the Registry Officer on request. The application for registry must be made on or before the 30th day of June, 1892, in the case of corporations transacting insurance in Ontario at the passing of the Act: section 12 (1) *infra*. No financial statement need be filed on application by licensees of the Dominion: section 13 *infra*. Proof of the license subsisting is made by the production of the license to the Registry Officer: section 19, (1) *infra*.

(2) For the purposes of this Act "licensees" shall include corporations authorized by any instrument or document issued under or by virtue of sections 38 or 39 of *The Insurance Act* of Canada, and every licensee licensed under or by virtue of *The Insurance Act* of Canada shall be deemed to be a corporation for the purposes of registration under this section.

Section  
6 (2).  
Interpre-  
tation :  
Licenses.

Every corporation transacting the business of life insurance on the assessment plan by virtue of *The Insurance Act* of Canada derives its powers under section 38 or under section 39 of *The Insurance Act*: R. S. C. c. 124. Section 38 applies only to companies incorporated or legally formed within Canada, R. S. C. c. 124, s. 37, and which transact the business of life insurance on the assessment plan: R. S. C. c. 124, s. 38.

Under s. 38  
Insurance  
Act of  
Canada.

Such companies are permitted to register under section 38 without deposit. The certificate of registration or document of authority is in the following form :

"OFFICE OF THE SUPERINTENDENT OF INSURANCE.

Ottawa, 189

"This is to certify that the (*name of corporation*) having complied with the provisions of the Insurance Act (being Chapter 124 of the Revised Statutes of Canada) relating to assessment life insurance companies has been duly registered in this office under the provisions of the said Act and is hereby permitted to carry on the business of life insurance on the assessment plan in the Dominion of Canada.

"Signed (*Superintendent of Insurance.*)

"Signed (*Deputy Minister of Finance.*)

**Section  
6 (2).**

The above certificate notwithstanding the absence of limitation is good for one year only, but is renewable in the discretion of the Minister from year to year : R. S. C. c. 124, s. 38 (2).

The following corporations have registered under section 38 :—The Mutual Relief Society of Nova Scotia ; The Canadian Mutual Life Association ; The Commercial Travellers Mutual Benefit Society ; The Provincial Provident Institution.

Swift v.  
Prov. Prov.  
Institution

Some doubt existed whether the last three corporations, which were organized under the *Benevolent Societies Act*, R. S. O., 1877, c. 167, were legally incorporated to transact insurance. For the purposes of *The Insurance Act* of Canada, it is now taken for granted, in consequence of the decision of the Court of Appeal for Ontario in the case of *Swift v. The Provincial Provident Institution*, 17 A. R. 66, that the companies referred to were legally incorporated. This ruling, however, does not extend to any society incorporated since the passing of R. S. O. 1887, c. 172. Therefore corporations organized in Ontario prior to the passing of chapter 172 of the Revised Statutes only, so far as Ontario societies are concerned, have status to register under section 38 of *The Insurance Act* of Canada; and as chapter 172 of the Revised Statute 1887 has been amended by adding as sub-section 2 to section 1 the following :—“ If a body incorporated under this Act does not go into actual operation within two years after incorporation, or for two consecutive years does not use its corporate powers for the purpose or for the chief



purpose set forth in the declaration required by section 5 of this Act, such non-user shall *ipso facto* work a forfeiture of the corporate powers, except so far as necessary for winding up the corporation; and, in any action or proceeding where such non-user is alleged, proof of user shall lie upon the corporation," (*Insurance Corporations Act, 1892*, section 63) it is extremely unlikely that any society organized in Ontario and not already registered under section 38 of *The Insurance Act* of Canada, can have status to be registered thereunder.

Section  
6 (2).

*Ins. Corp.  
Act, 1892, s.  
63.*

Under section 37 of *The Insurance Act* of Canada, Canadian assessment life companies may, at the discretion of the Minister, on report of the Superintendent approved by the Treasury Board, be exempted from the operation of certain sections of *The Insurance Act* of Canada. Among the provisions from which such companies may be exempted are those of sections 4 *et seq.* relating to licenses and deposits to be made before the issue of license. The Minister, under section 37, may, in his discretion, exempt assessment life companies from those provisions, but there is nothing to prevent him from refraining from the exercise of such discretion; or if such discretion has been already exercised, from withdrawing the exemption with respect to such of the provisions as are in their nature applicable to companies of this description; and there is nothing in the provisions requiring a deposit which renders it inapplicable to such companies. On making a deposit a license would issue to the company and it would be scheduled as a

Societies  
registered  
under s.  
38 may  
make  
deposit.



Section  
6 (2).

licensed company and not as a company registered under section 38: *per* R. Sedgewick, Q.C., Dep. Min. of Justice, Nov. 19th, 1890.

No deposit  
received  
from  
society  
under this  
Act.

Section 22 (1) of this Act on the other hand provides that no friendly society shall be required or permitted to make any deposit whatsoever of cash or securities with the insurance department or other department of the Province of Ontario.

Under  
section 39  
of *Ins. Act*  
of Canada.

The corporations coming under section 39 of *The Insurance Act* of Canada are likewise formed for the purpose of carrying on the business of life insurance upon the co-operative or assessment plan, but are incorporated or legally formed elsewhere than in Canada. Any such corporation is not registered as are corporations under section 38, but on making deposit is licensed by the Minister, and thereafter has the right to transact business so long as it continues to pay its losses to the full limit named in its certificates or policies and has complied with all the requirements of *The Insurance Act* of Canada: R. S. C. c. 124, s. 39 (1) and (2); see also section 41 (2) *infra*. The following have at this date received a license under section 39:—The Covenant Mutual Benefit Association of Illinois; The Mutual Reserve Fund Life Association of New York; The Home Benefit Association of Massachusetts.

Registry  
under this  
Act.

The corporations authorized by virtue of sections 38 and 39 are, upon due application and upon proof of such document of authority subsisting, entitled to be registered on the Insurance License Register: section 6 (1).

Due application includes the payment to the Provincial Treasurer of the fees prescribed by section 62. The scale in the case of corporations empowered under section 38 of *The Insurance Act* of Canada is prescribed in section 62, Division II, 2; in the case of corporations deriving their powers under section 39 the scale is found in section 62, Division II, 1.

Section  
6 (2)-(3).

Among the licensees of the Dominion of Canada is a private partnership transacting plate glass insurance, and some quasi-corporations, whose corporate nature might be questioned. Therefore it is enacted that every licensee of the Dominion of Canada shall be deemed to be a corporation for the purpose of registration under this Act.

Dominion  
Licensees  
Corpora-  
tions for  
purposes  
of this Act.

(3) Suspension or cancellation of the authorization of a corporation under *The Insurance Act* of Canada shall, *ipso facto* and without notice from the Registry Officer, operate in the respective cases as suspension or cancellation of registry under this Act.

Suspension  
or cancella-  
tion or non-  
renewal of  
authoriza-  
tion etc.  
under  
R. S. C.  
c. 124.

To the same effect is section 19 (2) *infra*. Suspension or cancellation of the license granted under *The Insurance Act* of Canada may occur as follows:—

“If the market value of any of the securities which have been deposited by any company declines below that at which they were deposited, the Minister may notify the company to make a further deposit, so that the market value of all the securities deposited by the company shall be equal to the amount which it is required by this Act to deposit; and on failure by the company to make

R. S. C.  
c. 124, s. 8  
(4).

**Section  
6 (3),**

such further deposit within sixty days after being called upon so to do, the minister may withdraw its license": R. S. C. c. 124, s. 8 (4).

*Ibid.* s. 9.

"If it appears from the annual statements, or from an examination of the affairs and condition of any company carrying on the business of fire or inland marine insurance, that the reinsurance value of all its risks outstanding in Canada, together with other liabilities in Canada, exceeds its assets in Canada, including the deposit in the hands of the minister, the company shall be notified by the minister to make good the deficiency; and on its failure so to do, within sixty days after being so notified, he shall withdraw its licence": R. S. C. c. 124, s. 9.

*Ibid.* s. 10.

"If it appears from the annual statements, or from an examination as provided for by this Act, of the affairs and condition of any company carrying on the business of life insurance, that its liabilities to policy holders in Canada, including matured claims, and the full reserve or re-insurance value for outstanding policies, as hereinafter described, after deducting any claim the company has against such policies, exceed its assets in Canada, including the deposit in the hands of the minister, the company shall be called upon by the minister to make good the deficiency; and on its failure so to do within sixty days, he shall withdraw its license": R. S. C. c. 124, s. 10.

"If it appears to the Superintendent that the assets of any company are insufficient to justify its continuance of business under the requirements of

sections 7, 8, 9 and 10 of the Act, or that it is unsafe for the public to effect insurance with it, he shall make a special report on the affairs of such company to the Minister; and if the Minister, after full consideration of the report, and after a reasonable time has been given to the company to be heard by him, and, upon such further inquiry and investigation as he sees proper to make, reports to the Governor in Council, that he agrees with the Superintendent in the opinion so expressed in his report, the Governor in Council may, if he also concurs in such opinion, suspend or cancel the license of such company; and such company shall, during such suspension or cancellation, be held to be unlicensed and unauthorized to do further business:" R. S. C. 124, s. 25 (8).

**Section  
6 (3).**

*Ibid.* s. 25 (8)

"The Minister may, from time to time, instruct the Superintendent to visit the head office of any company licensed under this Act, and incorporated or legally formed elsewhere than in Canada, and to examine into the general condition and affairs of such company; and if such company declines to permit such examination or refuses to give any information necessary for such purpose, in its possession or control, its license shall be withdrawn:" R. S. C. c. 124, s. 25, (11).

*Ibid.* s. 25  
(11).

"Whenever satisfactory proof has been furnished to the Minister of any undisputed claim upon a company arising on any policy of life insurance in Canada, remaining unpaid for the space of sixty days after becoming due, or of a disputed claim remaining unpaid after final judgment in regular

*Ibid.* s. 20

Section  
6 (3).

course of law, and tender of a legal valid discharge made to the agent of such company, the Minister may withdraw the license of such company:" R. S. C. c. 124, s. 29, see also ss. 45 and 46; and sections 44 and 49 *infra*.

*in page 514  
515*

Entry on  
register.

Upon the license of any company being withdrawn or suspended a notice thereof appears in the *Canada Gazette*, R. S. C. c. 124, ss. 18 and 25 (a), and such notice in the *Canada Gazette* is sufficient authority for the Registry Officer to make entry on the Insurance License Register suspending or cancelling the registry: section 49 (3) *proviso*, *infra*. The proceedings after cancellation of registry, noticed above as applicable to a licensee of the Province, are not applicable to licensees of the Dominion: section 52 (1) *infra*. Recourse must be had to *The Winding-up Act*, R. S. C. c. 129.

Proviso:  
revivor of  
registry.

Provided that when, after such suspension of authorization under *The Insurance Act* of Canada, the corporation has under the said Act been permitted to revive its authorization, the Registry Officer may grant a revivor of registry and issue his certificate of the same.

R. S. C.  
c. 124, s. 30.

"Such licenses may be renewed if, within thirty days after such withdrawal, such undisputed claims or final judgments upon or against the company are paid and satisfied:" R. S. C. c. 124, s. 30; see also s. 46, *ibid*.

## s. 31.

"When the license of a company carrying on the business of life insurance has been withdrawn by the Minister under any of the foregoing sections of this Act, such license may be renewed if,

within thirty day after such withdrawal, such company complies with the requirements of this Act, to the satisfaction of the Minister:" R. S. C. c. 124, s. 31. Sections 6 (3), 7 (1).

7. (1) The duty of determining, distinguishing and registering those insurance corporations, which under this Act or any amending Act are legally entitled to registry on the Insurance License Register, and of granting registry accordingly, shall devolve upon the Inspector of Insurance, subject to appeal as hereinafter provided. Powers and duties of inspector of insurance.

The powers and duties of the Inspector of Insurance and of the Registrar of Friendly Societies regarding the corporations entered upon the two registers respectively are identical: cf. section 11, *infra*.

In *Dwelling House Insurance Co. v. Wilder*, Kansas S. C. 1889, 19 Ins. Law Journal, 235, it was decided that the determination of the Superintendent of Insurance in granting, refusing, or revoking licenses authorizing insurance companies to transact business within the State involves the exercise of official judgment and discretion on his part, which cannot be controlled or directed by mandamus. After the Superintendent of the Insurance Department has refused to issue a license to a foreign company to do business in the State, a mandamus to compel him to issue such license will not be granted: *People ex rel v. Fairman*, 92 N. Y. 656. Where the duties of the Superintendent of Insurance are judicial in their nature, mandamus will not lie to compel him to issue his certificate: *In re Schmidt*, N. Y. S. C. 1890, Mandamus

Section  
7 (1).

10 New York Sup. 583. To obtain a mandamus, moreover, there must be no other effective lawful method of enforcing the right. "It is well settled that where there is a remedy equally convenient, beneficial and effectual, a mandamus will not be granted. This is not a rule of law, but a rule regulating the discretion of the court in granting writs of mandamus": *per cur. re* Barlow, 30 L. J. Q. B. 271; Shortt on Informations, etc., 232. The decisions of the Registry Officer are subject to appeal; section 51 (1), *infra*; the proper method of contesting his decision is to appeal, as provided, and not proceed by mandamus.

Other proceedings  
against  
registry  
officer.

In an action to recover damages from the Insurance Commissioner by reason of losses sustained through insolvent companies alleged to have been licensed in known violation of the law, which directed licenses to be granted to companies that had complied with the law, and of whose soundness he was satisfied, it was held that the Commissioner is clearly invested with a discretion to grant, and he is also invested with discretion to revoke, the license of an insurance company upon certain circumstances appearing to his satisfaction. It follows that his action in issuing the license was discretionary, and therefore judicial. No liability, consequently, attached, unless his action were corrupt: *State to Use of Davis et al. v. Thomas et al.*, Tennessee S. C. 1890, 19 Ins. Law Journal 461.

The powers of the Inspector of Insurance under this Act are in addition to the powers conferred by *The Ontario Insurance Act*. As Registry

Officer, the Inspector of Insurance has power to call for evidence, and may take or receive affidavits or depositions, and may examine witnesses upon oath: section 7 (2) *infra*. In certain disputed cases respecting the status of a corporation, the Registry Officer decides both as to the law and the facts: section 49 (3), *infra*. His decision is rendered in writing, and an appeal may be had therefrom to a Divisional Court of the High Court of Justice. The mode of appeal is prescribed in section 51, *infra*.

Section  
7 (2), (3).

Powers  
under this  
Act addi-  
tional.

(2) For purposes of these duties or of his duties under the Ontario Insurance Act, or under other Acts of this Province relating to insurance, the Inspector may require to be made, or may take or receive affidavits or depositions, and may examine witnesses upon oath.

The same powers are conferred on the Registrar of Friendly Societies: section 11 (2), *infra*. Affidavits for use under this Act may be sworn to before any Justice of the Peace, Notary Public, or Commissioner of the High Court for taking affidavits: section 47 (2) *infra*.

(3) The remuneration of the Inspector in respect of the services required by this Act shall be such sum as the Legislature shall from time to time determine.

#### SOCIETIES INCORPORATED UNDER THE BENEVOLENT SOCIETIES ACTS.

Friendly societies had existed in England from an early time as voluntary associations without legal recognition; although we find in 1534 the Commissary of the Bishop of London

History of  
legislation



Section  
8.

certifying the rules of trade guilds: Pratt, *Law of Friendly Societies*, 11th ed. p. 2, note. As voluntary associations, friendly societies experienced frequent losses through defalcations, or bankruptcy of officers and trustees, and there was no help in the law of the time to recover moneys so lost. To protect societies from loss by misfeasance or bankruptcy of their officers was the motive of Sir George Rose's Act, passed in 1793, for the encouragement and relief of friendly societies, 33 Geo. 3 c. 54 (Imp.) Geo. 3, c. 54, which was the first legislative sanction of the existence of such societies. This was the motive, likewise, of the first friendly society legislation of the Province of Canada, being an Act for incorporating charitable, philanthropic and provident associations: 13 & 14 Vic. c. 32. The preamble recites that "whereas large and increasing numbers of all classes of the community have for some time past associated themselves together for the purpose of making provision for themselves and families, by contributing subscriptions or otherwise, against sickness, misfortune and death, and for the relief of the widows and orphan children of deceased members; and whereas the accumulated funds of such associations, owing to the absence of legal protection, have been subjected to great and serious losses from frauds and defalcations; and whereas it is expedient to encourage habits of providence and forethought amongst all Her Majesty's subjects;" it was enacted "that it shall and may be lawful for any number of persons to unite for the purpose of making provision, by means of contributions, subscriptions, donations or

33 Geo. 3  
c. 54 (Imp.)

13 & 14 Vic.  
c. 32 (Can.)

Definition  
of society  
within the  
Act.

otherwise, against the several contingencies of sickness, unavoidable misfortune or death, and for relieving the widows and orphan children of members deceased." The members might nominate, choose and appoint proper persons as trustees, treasurers, secretaries, or other officers to conduct the business, discipline and management of the society. The members of the society might acquire personal and certain real property in the name of the society, or in the name of the presiding officer thereof to hold for the use of the members, and might sell and alienate the same. The members were also granted a corporate seal, continued succession, power to contract and be contracted with, power to sue and be sued: 13 & 14 Vic. c. 32, s. 3.

Section 8.

Appointment of officers.

Corporate powers conferred on societies.

Chapter 71 of the Consolidated Statutes of Canada was the next step in the legislative chain. The enabling section in that Act reads: "Any number of persons may unite themselves into a society for making provision, by means of contributions, subscriptions, donations, or otherwise, against sickness, unavoidable misfortune, or death, and for relieving the widows and orphan children of members deceased." The corporate powers conferred by the former Act were continued. The law remained unchanged until 1871, when the Consolidated Statutes were amended by 34 Vic. c. 32. (Ont.) It was thereby enacted "that any number of persons not less than five may unite themselves into a society for making provision by means of contributions, subscriptions, donations, or other-

Cons. Statutes of Canada, c. 71.

Definition.

34 Vic. c. 32 (O.).

Not less than five persons to constitute society.

**Section 8.**

Incorporated by executing a declaration.

Contents of declaration.

Where filed.

Society a body corporate and politic.

Existing societies how incorporated.

wise, against sickness, unavoidable misfortune or death, and for relieving the widows and orphan children of members deceased," and "may become incorporated by making and signing a declaration in duplicate, or in as many parts as shall be required, of their having united themselves together for the purposes aforesaid, which declaration shall set forth (1) the corporate name of the society; (2) its purposes; (3) the names of those who are to be its first trustees or managing officers; (4) the mode in which their successors are to be appointed; (5) generally such other particulars and provisions as the society may think necessary." One of the original parts of the declaration was required to be filed in the office of the Registrar of Deeds for the county or division in which the society usually held its general meetings. By compliance with these formalities, the persons who signed the declaration and their associates and successors being members of the society became "a body corporate and politic" with "the powers, rights and immunities vested in such bodies by law." Existing societies were allowed the benefit of this improved incorporation on making a similar declaration and filing therewith a copy of the constitution and by-laws of the society.

37 Vic. c. 34 (O).

Benevolent

The law relating to friendly societies underwent important change in the Act of 1874 respecting Benevolent, Provident and other Societies: 37 Vic. c. 34, (Ont.). The allowed scope of any such society was restricted in the enabling clause, which

read: "Any five or more persons of full age may become incorporated under this Act for any benevolent or provident purpose; or for any other purpose not illegal, save and except the purpose of trade or business, and any purpose heretofore provided for by any of the Acts mentioned in the schedule to this Act, or any other Act heretofore in force and not hereby repealed." In the Schedule of Acts for purposes *not* intended by this Act," are Con. Statutes of Upper Canada, c. 52, intituled "An Act respecting Mutual Insurance Companies," and 36 Vic. c. 44, (Ont.), intituled "An Act to consolidate and amend the laws having reference to Mutual Fire Insurance Companies in the Province of Ontario." The declaration, containing the same matters as before, was now to be made and signed before a Judge of a Superior Court or a County Court Judge, and the judge was to endorse thereon a certificate that the declaration appears to him to be in conformity to the Act, section 2 (3). A duplicate original of the declaration was to be filed with the Provincial Registrar or the Clerk of the Peace for the county in which the society held its annual and general meetings. Provision was made (section 5) for incorporating under the Act existing societies. For the first time payments out of the funds of the society on the death of a member were protected from creditors, and also payment *bona fide* by the society to any person thought to be entitled defeated, as against the society, the rights of persons actually entitled, section 10.

Section.  
8.

Trade or  
business.

Excepted  
purposes.

Declara-  
tion how  
executed  
and filed.

Payments  
by society  
protected.

Section  
8.Societies  
subject to  
further  
legislation  
control.

It was further expressly declared that societies incorporated under this Act shall be subject to such further and other provisions as the Legislature shall hereafter deem expedient, section 18. This reservation was repeated in R. S. O. 1877, c. 167, s. 19, but disappeared in the revision of 1887, because probably considered superfluous in view of the general provision R. S. O. 1887, c. 1, s. 8 (40).

R. S. O. 1877  
c. 167.

The Revised Statutes of Ontario (1877) followed closely the terms of the Act of 1874, and, like the latter Act, excepted from the purposes for which a society might thereunder be incorporated, "the purpose of trade or business and any purpose provided for by any of the Acts mentioned in the schedule to this Act." R. S. O. 1877, c. 161, intituled "An Act respecting Mutual Insurance Companies," was one of the Acts enumerated in that schedule.

Excepted  
purposes.R. S. O. 1877  
c. 161.41 Vic. c. 8,  
(O.) s. 18.47 Vic. c. 27,  
(O.) s. 3.R. S. O. 1887  
c. 172.R. S. O. 1887  
c. 167.

Prior to the Revision of 1887, was passed 41 Vic. c. 8, (Ont.), s. 18, substituting a new section for R. S. O. (1877), c. 167, s. 11, relating to payments by the society; and 47 Vic. c. 27, (Ont.), s. 3, permitting a society to change its name. Chapter 172 of the Revised Statutes, 1887, repeats the section defining the purposes for which societies may be incorporated, but in the schedule to section 1, enumerating purposes excepted, because dealt with by other statutes in force, appears "An Act respecting Insurance Companies," R. S. O. 1887, c. 167.

A very perplexing statute, as it turned out, was 51 Vic. c. 22, (Ont.), which, by section 2, extended the protection of *The Act to secure to Wives and Children the Benefit of Life Insurance* (R. S. O., 1887, c. 136) to "membership, beneficiary and other certificates and contracts relating to life insurance, issued or entered into by any society or association of persons for any fraternal, provident, benevolent, industrial or religious purpose, among the purposes of which is the insurance of the lives of the members thereof exclusively, or by any association for the purpose of life insurance formed in connection with any such society or organization and from its members, and which insures the lives of such members, including certificates heretofore issued or entered into." As will be seen further, this provision was held to be a legislative recognition of the legality of society contracts, although such contracts partook of the nature of insurance over which the Legislature had exercised theretofore jealous jurisdiction: *Swift v. Provincial Provident Institution*, 17 A. R. 66. 51 Vic. c. 26, (Ont.), respecting the name of a proposed society, need only be noted. 53 Vic. c. 39, (Ont.), s. 9, repaired the breach made in the law of insurance by 51 Vic. c. 22. The prohibition contained in R. S. O. 1887, c. 172, s. 1, is thus extended: "Provided that no company, society, association or organization incorporated under this Act, after the 10th day of March, 1890, shall have authority to undertake or effect for valuable consideration, or to agree or offer so to undertake or effect any contract of insurance, indemnity, or guarantee whatsoever, with the mem-

Section 8.

51 Vic. c. 22, (O) s. 2.

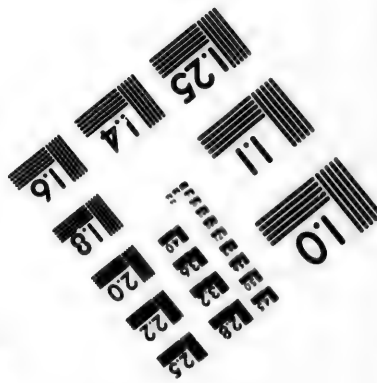
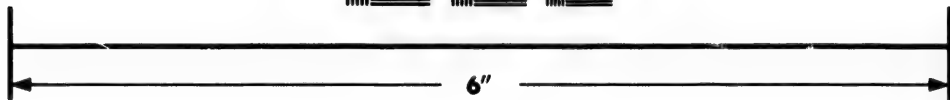
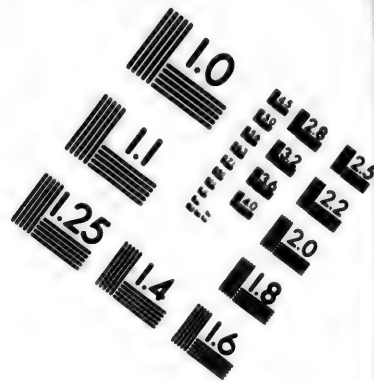
R. S. O. 1887 c. 136

51 Vic. c. 26, (O)

53 Vic. c. 39, (O) ss. 9, 10, 13.

10th March, 1890.





# Photographic Sciences Corporation

**23 WEST MAIN STREET  
WEBSTER, N.Y. 14580  
(716) 872-4503**



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Section  
8

bers of the corporation or with others, or any contract within the intent of *The Ontario Insurance Act*, or of chapter 136 of these Revised Statutes; and the expression 'offer to undertake contracts' shall have the same meaning as in *The Ontario Insurance Act*; and any person contravening this section shall be liable to the penalty imposed by section 56 of *The Ontario Insurance Act*, which penalty shall be enforced and applied as in the said 56th section enacted."

"Provided also that no company, society, association or organization, incorporated under this Act on or before the said 10th day of March, 1890, and not authorized by its original certificate or declaration of incorporation to undertake such contracts as aforesaid, shall, by virtue of section 19 of this Act or otherwise, have authority to change the purposes of the corporation so as to include the undertaking of such contracts as aforesaid."

S. 13, construction  
of, 51 Vic.  
c. 22.

It was enacted by section 13 of the same Act that—"The Act passed in the 51st year of Her Majesty's reign, and chaptered 22, shall not be held to relieve from the obligation of being licensed, nor to relieve from the consequences of transacting business while unlicensed, any corporation which before the passing of the said Act was required by *The Ontario Insurance Act* to be licensed before undertaking any contract within the intent of *The Ontario Insurance Act*." Provision was likewise made (section 10) for suspending or revoking the corporate powers of any society

S. 10  
suspending  
or revoking  
corporate  
powers of  
societies.

incorporated under *The Benevolent Societies Act*, if Section 8. the society use its corporate powers for any fraudulent or other unlawful purpose.

Mention of the Act, 54 Vic. c. 59, (Ont.), s. 2, permitting societies to borrow money on debentures, 54 Vic. c. 59, (O.) s. 2. brings to a close this summary of the history of the legislation of Ontario respecting friendly societies.

"It would not at first have been very likely to occur to any one that a system of mutual life insurance on a large scale was capable of growing up or of being organized under the Benevolent Societies Act," \* \* \* *per* Osler, J.A., in *Swift v. Provincial Provident Institution*, 17 A. R. at p. 71. In order to understand the place now given to society contracts in the scheme of Ontario insurance law, it is necessary to ascertain what difference there is between a society which undertakes contracts in the nature of insurance with its own members and a mutual insurance company proper. Friendly societies and Mutual Insurance Coy's.

"Previously to 50 Vic. c. 26, (Ont.), no power existed, except by special charter, for the incorporation of companies to carry on the business of life insurance, and previously to that time, any company, although duly incorporated, was prohibited under heavy penalties from making any contracts of insurance until it had obtained a license and made a deposit with the Government," *per* Burton, J.A., in *Swift v. Provincial Provident*, *supra*. That Act itself did not made provision for Mutual insurance in Ontario.

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Section  
8.

the incorporation of other than joint stock companies, so that the promoters of a mutual life insurance company have still to apply to the Legislature for corporate powers. The principle of mutual life insurance is thus described by Lord Macnaghten in *New York Life Insurance Co. v. Styles*, 14 App. Ca. 381 at p. 411:—"Certain persons agree to insure their lives among themselves on the principle of mutual insurance. They take care to admit none but healthy lives. They contribute according to rates fixed by approved tables, and they invite other persons to come in and join them by insuring their lives on similar terms. The rates fixed by the tables are taken as being sufficient to provide for expenses, to meet liabilities, and to leave a margin for contingencies." A company constituted upon the principle of mutual insurance is a mutual insurance company as distinguished from a stock or proprietary company, in which "the corporation and its shareholders form a body quite distinct in personality and in interest from the insured. A member of the corporation might effect an insurance with it, but that circumstance could neither enlarge nor diminish his rights as a partner," *per* Lord Watson, S.C. at p. 391. Corporations of this kind carrying on the business of life insurance are of comparatively recent origin in Ontario: see 32 Vic. c. 17, (Ont.), incorporating the Ontario Mutual Life Assurance Company. The principles and constitution of mutual insurance companies are best seen in mutual fire companies, which, in Ontario, have a longer history. In 1836 was passed an Act to authorize the establishment

32 Vic. c. 17  
(O.)

6 Wm. IV.  
c. 18.

of Mutual Insurance Companies in the several Districts of this Province: 6 Wm. IV. c. 18. Mutual insurance here means no more than mutual insurance against losses by fire, as appears from the Preamble: "Whereas divers loyal subjects of His Majesty, being inhabitants of this Province, have, by their petition, represented the great advantages that would arise from the introduction into the Province of the principles of mutual insurance against losses by fire, and have prayed the interference of the Legislature to enable them to bring the said principles into active operation." It was a new departure in legislation to enact a general measure under which a number of companies might incorporate, instead of the Legislature reserving to itself the right to pass upon each scheme as it was proposed; and the Imperial Government sanctioned the Act with much reluctance. It was only in 1889 that a similar Act was passed, under which mutual live stock insurance companies might be incorporated. 52 V. c. 33, (Ont.)

"It being expedient to provide for the speedy and certain payment of loss insured by enabling mutual insurance companies to provide a guarantee capital," the Act, 22 Vic. c. 46 (Ont.) empowered any company which added the feature of guarantee capital to "create from the surplus profits of the company from year to year a reserve fund for the purpose of paying off the guarantee capital, after which its affairs and property shall revert to and be vested in the parties insured, as the sole members of the company." The details of the returns to be

22 V. c. 46  
(O.)

**Section 8.** made by mutual fire insurance companies were settled by 36 Vic. c. 44 (Ont.) Such companies were required to show among liabilities "the amount covered by policies in force in respect of each class of risks." It was further provided (section 74) that the Lieutenant-Governor in Council might appoint a qualified person to examine into the affairs of any mutual fire insurance company, "and whenever it shall appear from such examination that the assets and financial position of such company are such as not to justify the continuance in business of any such company, the Attorney-General may apply in a summary manner on motion to one of the superior courts of law or equity, for an order requiring such company to show cause why the business of the company should not be closed \* \* \* ." The further statutory safeguards of license, Government deposit and inspection have been added from time to time: 39 Vic. c. 23, (Ont.); 42 Vic. c. 25, (Ont.); R. S. O. 1887, c. 167.

**Distinction** It is thus a clear ground of distinction between a mutual insurance company and a friendly society undertaking contracts of insurance with its members that the mutual insurance company must be at all times *actuarially*, as well as actually, solvent. The law regards the contingent liability of an insurance company, proprietary or mutual, as a present liability. Heretofore the law has not concerned itself with the financial condition of a friendly society, and even now goes no further than to inquire if the society be *prima facie* solvent, or to

ascertain that the society has either no present liabilities, or has immediately realizable assets adequate to discharge its present liabilities. This difference seems to have its analogy in the difference in constitution of the two corporations. To enter into contracts of insurance is the function of the mutual insurance company, *in re* Padstow Total Loss and Collision Association, L. R. 20 Ch. D. 137; *ex parte* Hargrove & Co., L. R. 10 Ch. App. 542; while insurance is not the sole or even the primary purpose of a friendly society. It has been held that a corporation, with salaried officers, paying commissions on risks obtained, insuring and admitting to membership any one having the requisite conditions of age and health, and requiring no other qualifications for membership, cannot evade the insurance laws by calling itself a benevolent society and obtaining a charter as such: *State v. Citizens' Benefit Association*, 6 Mo. App. 163; see also *Governors, etc. v. American Art Union*, 7 N. Y. 228; *State ex rel. v. Graham*, 66 Iowa, 26.

Section  
8.

The benefits of a friendly society were regarded as flowing from benevolence and not from a contractual relation between society and member. That something of donation still clings to society benefits other than those within the new Act appears from R. S. O. 1887, c. 172, s. 11, which enacts that "in case any sum is paid in good faith to the person who appears to the treasurer or other officer to be entitled to receive the same, or is applied in good faith for the purposes by the rules

Society  
benefits  
not regard  
ed as con-  
tracts.

**Section  
8.**

provided, no action shall be brought against the treasurer, or other officer, or the society in respect thereof." It is evident that payment to B. of an amount due to A. under a contract with A. cannot be satisfaction of the contract so as to bar A. from recovering. This view of society benefits was the probable reason of courts declining jurisdiction (in the first instance at all events) over disputes between member and society, but remitting the member for relief to the tribunals of the society itself.

39 Vic. c. 23  
(O.).

At the passing of the Act 39 Vic. c. 23 (Ont.), either the benefits of societies were not regarded as contracts of insurance or it was intended to prohibit societies from undertaking such contracts unless they complied with the statutory requirements of license and deposit. For after the declaration that "This Act shall not apply to any company licensed under an Act of the Parliament of Canada, nor to any mutual fire insurance company which does not receive cash premiums in lieu of premium notes, but acts exclusively on the mutual principle (section 1);" it is enacted that "Except such insurance companies as are mentioned in the next preceding section, it shall not be lawful for any insurance company to accept any risk or issue any policy of insurance, or receive any premium, or transact any business of insurance in Ontario, or to prosecute or maintain any suit, action or proceeding either at law or in equity, relating to such business, without first obtaining a license from the Treasurer of Ontario." (Section 2.)



The exemption in section 3 (2) of *The Ontario Insurance Act* that the "Act shall not apply to any benevolent, provident, industrial or co-operative society not requiring a license for any such contract as aforesaid before the passing of this Act" is not found in any corresponding statute prior to 50 Vic. c. 26 (Ont.), and seems to have been inserted in that statute because the meaning of a contract within *The Insurance Act* was by section 2 (6) of that Act greatly extended.

Section  
7 (3).  
Exemption  
in Ontario  
Insurance  
Act.

For society benefits had in the meantime taken on contractual elements and would be within the intent of section 2 (6) of *The Insurance Act*, which includes any "contract of indemnity, guarantee, suretyship, insurance, endowment, tontine or annuity on life, or any like contract which accrues payable on or after the occurrence of some contingent event." But *The Insurance Act* added nothing of affirmation to the legality of society insurance. If the society did not require a license for any such contract before the passing of the Act, it was not affected by *The Insurance Act* merely by reason of its contract being within section 2 (6).

One Morris O'Heron in his lifetime was a member of the Canadian Order of Home Circles, a society incorporated under R. S. O. 1877, c. 167, and was the holder of a certificate, by virtue of which his children, named therein as beneficiaries, were to be entitled upon his death to the amount named therein, and as therein apportioned. Subsequently O'H. made by will a different apportionment of the moneys under the certificate. A

Re O'Heron  
11 P.R. 422.

Section  
8.

contest arising among the children after his death, the society paid the money into Court. Upon application for payment out, Proudfoot, J., held that the Act 47 Vic. c. 20 (Ont.), did not apply to benevolent societies incorporated under R. S. O. c. 167, and made the order for payment out of the moneys according to the certificate.

51 Vic. c. 22  
(O), ss. 1-2.

In consequence of the decision in *re O'Heron* was passed 51 Vic. c. 22, which extended the provisions of *The Act to secure to wives and children the benefit of life Insurance* "to membership, beneficiary and other certificates and contracts relating to life insurance issued or entered into by any society or association of persons for any fraternal, provident, benevolent, industrial or religious purpose, among the purposes of which is the insurance of the lives of the members thereof exclusively, or by any association for the purpose of life insurance formed in connection with any such society or organization and from its members, and which insures the lives of such members, including certificates or contracts heretofore issued or entered into." The purpose of this Act, apparently, was not to enlarge the *Benevolent Societies Act*, nor to alter the legal status of any organization incorporated under it, but was simply to extend the privileges of the Act respecting insurance for wives and children to the contracts of societies properly incorporated under the *Benevolent Societies Act*: see *Swift v. Provincial Provident Institution*, 17 A. R. *per* Hagarty, C.J.O., at p. 69, and also 53 Vic. c. 39, (Ont.), s. 13,

Status as  
Insurance  
Corpora-  
tions be-  
fore the  
passing of  
this Act.

The effect, however, of 51 Vic. c. 22, coupled with Section 8.  
the decision of the Court of Appeal in *Swift v. Provincial Provident* was to recognize the status of societies duly incorporated before the R. S. O. 1887, c. 172, to undertake contracts of insurance; but this recognition did not extend to societies incorporated under Chapter 172 of the Revised Statutes, 1887. The Insurance Department of Canada has adopted this view of societies incorporated under *The Benevolent Societies Act*: Report of Superintendent of Insurance for the year 1889, p. xxx.

A registered society whether incorporated before or after R. S. O. 1887, c. 172, may, so far as authorized by the annual certificate issued to it, undertake contracts of insurance made with its own members exclusively for sickness, disability, mortuary or funeral benefits, or for a sum or collective sums not exceeding \$3,000 in all, payable at the death of the assured, see section 4 (2) C. *supra*; and if the society was on the 11th day of March, 1890, transacting exclusively with its members endowment insurance *bona fide*, and has so continued up to the date of application for registry, the Registrar may admit the society to registry as a friendly society transacting endowment insurance: section 4 (2) C. *proviso* (a.) *supra*. A society may not lawfully undertake contracts other than the above.

Section  
8 (1).

registra-  
tion of  
societies  
incorpora-  
ted under  
Benevo-  
lent socie-  
ties Acts of  
Ontario.

8. (1) Where a friendly society other than one of the corporations mentioned in section 9 was incorporated under chapter 167 of the Revised Statutes of Ontario, 1877, or under any of the Acts consolidated thereby, or was prior to the 11th day of March, 1890, incorporated under chapter 172 of the Revised Statutes of Ontario, 1887, or under any of the Acts consolidated thereby, and where the declaration duly certified and filed under the said respective chapters or Acts declared insurance or contracts in the nature thereof as among the purposes of the society, and the society so incorporated was on the tenth day of March, 1890, and is still at the date of application *bona fide* in actual and active operation, and is managed and operated according to the true intent of the said declaration, and of the Act under which the declaration was filed, the society, upon due application, and upon proof of these facts, shall be entitled to be registered on the Friendly Society Register.

Section 9 (*vide infra*) relates to societies and organizations deriving their powers by virtue of a special Act, or of a public Act of the Parliament of Canada. But Friendly Societies, with insurance powers, incorporated under Statutes of Ontario, must have been so incorporated under R. S. O. 1877, c. 167, or under any of the Acts consolidated thereby, or under R. S. O. 1887, c. 172. No society incorporated under R. S. O. 1887, c. 172, after the 10th day of March, 1890, has authority to undertake any contract of insurance. Nor could an existing society amend its declaration after the said date so as to take insurance powers: 53 Vic. c. 39, (Ont.), s. 9. As such contracts are *ultra vires* of a society incorporated under *The Benevolent Societies Act* after the 10th day of March, 1890, the society is not admitted to registry. And if, although duly incorporated, the society was not in fact undertaking contracts of insurance on the 10th day of

u/pag 5316

5-6-7

5-6-8

5-6-9

Societies  
not entit-  
led to  
registry.

5-10

March, 1890, and is not at the date of application *bona fide* in actual and active operation, the society is not entitled to registry. This is in harmony with the provision that "if a body incorporated under *The Benevolent Societies Act* does not go into actual operation within two years after incorporation, or, for two consecutive years, does not use its corporate powers for the purpose, or for the chief purpose set forth in its declaration, such non-user shall *ipso facto* work a forfeiture of the corporate powers, except so far as necessary for winding up the corporation: section 63, (1), *infra*. If the society has less than 50 members in good standing on its books, or is conducted as a trading or mercantile venture, or for purposes of commercial gain, it is not entitled to registry as a friendly society, but is regarded as a corporation required by law to be licensed for the transaction of insurance: section 4 (2) D, *supra*. Again, if the society undertakes insurance other than contracts of insurance made with its own members exclusively for sickness, disability, mortuary, or funeral benefits, or insures for a sum or for collective sums exceeding \$3,000 in all, payable on the death of the assured, the society is not entitled to register as a friendly society, section 4 (2) C., *supra*. Under proviso (a) to this sub-section certain societies transacting endowment insurance are admitted to registry. For other grounds of disqualification see section 4 (2) D, *supra*.

The declaration duly certified and filed under the Act whereby the society was incorporated

Section  
8 (1).

Declaration  
of  
purposes.

**Section  
8 (1).**

Contracts  
must be  
within  
scope of.

must declare insurance, or contracts in the nature thereof to be among the purposes of the society. It is well settled that a corporation cannot lawfully do that which its constitution does not expressly or impliedly warrant: Lindley, Law of Companies, 5 ed. 164; *Hawkes v. Eastern Counties R. Co.*, 5 H. L. C. 331. The memorandum of association (under the English Companies Acts), is the fundamental and (except in specified particulars) the unalterable law of the corporation, and the incorporation is only for the objects and purposes expressed in that memorandum. The inability of a corporation to make contracts beyond the scope of these objects rests on an original limitation and circumscription of the powers of the corporation by the law and for the purposes of the incorporation; and does not depend upon some express or implied prohibition, making acts unlawful which otherwise the corporation would have had a legal capacity to do: *Ashbury Railway Co. v. Riche*, L. R. 7 H. L. 694, *per* Lord Selborne; also, *Baroness Wenlock v. River Dee Co.*, L. R. 36 Ch. D. 684 n. *per* Bowen. L.J. The declaration executed by the incorporators of a society under *The Benevolent Societies Act* answers to the memorandum of association under the English Companies Acts. Thus, in *Bergman v. St. Paul Mutual, etc.*, 29 Minn. 275, it was held that the articles of incorporation of a society and the statutes under which they are formed, are its charter and its fundamental and organic law, subject to the general law of the State. They fix the rights of its members, and are in the nature of a fundamental contract between

the corporators, and, in practical effect, between the society and its members, which neither party is at liberty to violate. The society and each member of it are bound by the charter, and neither can do what it does not authorize: *Rosenberger v. Washington Mutual, etc.*, 87 Pa. St. 207; see also *Bray v. Farwell*, 81 N. Y. 600.

Section  
8 (1).

In the United States Courts two doctrines <sup>*Ultra vires,*  
who may  
set up.</sup> have authority respecting the right to raise the question whether the contract sued upon is *intra vires* of the corporation. The first, and perhaps the better, opinion is, that where it is a simple question of authority to contract, arising either on an issue of regularity of organization, or of power conferred by the charter, a party who has had the benefit of the agreement cannot be permitted in an action founded upon it to question its validity. The usurping or excess of corporate power is a matter to be complained of by the government. Thus, a mutual benefit society cannot defend against a suit on one of its contracts of life insurance upon the plea of *ultra vires*, when it has been receiving the assessments on the policy: *Matt v. Roman Catholic, etc., Society*, 30 N. W. Rep. 799; where the contract has been fully performed by the party contracting with the society, and the society has received the benefit from such contract, it cannot invoke the doctrine of *ultra vires* to defeat an action brought against it on such contract: *Bloomington Mutual Life Benefit Association v. Blue* (1887), 16 Ins. Law Journal, 486, 120 Ill. 121.



Section  
8 (1).

The second doctrine permits either party to the contract to set up the want of power in the society to enter into such a contract—not that either party stands in a position entitling such party to take advantage of the want of such power, but on grounds of public policy; and the defence so set up is regarded as the defence of the public, not that of the contracting party urging it: *Mutual Benefit Association v. Hoyt* (1881), 10 Ins. Law Journal 626, 46 Mich. 473; see also Lindley, *Law of Companies*, 5th ed., 235.

The two  
doctrines  
reconciled.

Cases might be multiplied in support of either view (see Niblack on *Mutual Benefit Societies*, § 7 *et seq.*), but perhaps the true statement of the law is:—Where the *ultra vires* is predicated of a whole class of contracts undertaken by the society, then, on grounds of public policy, either party may raise the question. But where the question is not of the validity of a whole class, but is particular and relating to the special contract in dispute as being without the constitution of the society, then, as the society has had the benefit of the contract it will not be permitted to urge that it had no authority to undertake the contract.

Under this  
Act.

As a certificate under the hand of the Registry Officer and the seal of his office, that on a stated day the corporation mentioned therein stood registered within the meaning of the Act is *prima facie* evidence in any Court of the facts alleged in the certificate (section 26 (5) *infra*), and as the authority of a corporation to undertake contracts of insurance is to be proved on an application for



registry, it is probable that the question of contracts of insurance generally being *ultra vires* of the society will not be raised in an action on such a contract, or if raised, that the Court will hold that the Registrar's certificate is conclusive. The certificate issued specifies the kind of insurance for which the corporation is registered: section 18, *infra*. Therefore, the defence may be set up by the society that a particular contract is *ultra vires* by reason of not being within the purposes stated in the certificate. It will probably be held, as above, that the society by such plea can not escape the burden of a contract of which it has received the benefit.

Section  
8 (1).

Contracts  
generally.

Particular  
contracts.

It seems that a *quo warranto* proceeding may be had in United States courts to dissolve a society which has usurped functions. Thus, in a *quo warranto* against an incorporated society, where it had assumed franchises not granted, and it appeared that the certificate of incorporation did not comply with the requirements of the statute under which it was organized, the court, in the exercise of its discretion, ousted the society of its franchise to be a corporation: *State v. Central Ohio Mutual Relief Assoc.*, 29 Ohio St., 399; also *State ex rel. v. Peoples, etc., Assoc.*, 42 Ohio St., 579; see also Morawetz on Private Corporations, § 1022. In England proceedings may be had at the instance of the Crown to recall a charter of incorporation, on the ground that it has been obtained by means of a fraud on the Crown. It is competent, moreover, to proceed by *quo warranto*, and to show that persons who represent

Proceed-  
ings to  
dissolve  
society.  
*Quo  
warranto.*

Section  
8 (1).

themselves as members or officers of a corporation are not so. But some members of the corporation may not ask the court to have it declared, as against other members of the corporation, that the incorporation was obtained by fraud or irregularity: *Glover v. Giles*, L. R. 18 Ch. D. 173.

The grant or refusal of a *quo warranto* information is in the discretion of the court (Shortt on Informations, 122), and the court will, it seems, be influenced by the consideration that the question involved may be otherwise tried: *ibid.* 148.

53 Vic. c. 39,  
s. 10.

In Ontario there is statutory provision for revoking the corporate power of a society. "If after a reasonable time has been given to the corporation to be heard, it appears to the Lieutenant-Governor in Council that any body incorporated under the provisions of *The Act respecting Benevolent, Provident and other Societies* is using its corporate powers for any fraudulent or other unlawful purpose, it shall be lawful for the Lieutenant-Governor in Council to suspend for a limited period, or to revoke the said corporate powers, and on any revocation the corporate powers shall *ipso facto* absolutely cease and determine except for the sole purpose of winding up the affairs of the corporation": 53 Vic. c. 39, s. 10. Under this section were revoked the corporate powers of The Septennial Benevolent Society and of The Lion Provident Life and Live Stock Association. See *Ontario Gazette*, April 11th, 1891.

The right of any corporation to transact in Ontario the business of insurance depends upon registration under this Act: section 27 (1) *infra*. And upon proof that any registry or certificate of registry has been obtained by fraud or mistake, or that a corporation exists for an illegal purpose, the registry of the corporation may be suspended or cancelled by the Registrar: section 25 (1) *infra*. An appeal may be had from the decision of the Registry Officer to a Divisional Court of the High Court: section 51 (1) *infra*. Notice of cancellation of the registry of a society incorporated under the law of Ontario operates *ipso facto* to make the treasurer, or other officer in custody of the funds, *interim* receiver for the society, and the winding-up of the society proceeds without the intervention of an application for a winding-up order: section 53 *infra*. After notice of cancellation, the society must absolutely cease to undertake contracts of insurance and must withdraw every offer to undertake such contracts: section 25 (2) *infra*.

To entitle a society to registration, it must show that it is managed and operated according to the true intent of the declaration of purposes filed on incorporation, and of the Act under which the declaration was filed. See section 8 (2) *infra*, for discussion of those matters relating to the management of the society which disqualify the society for registration.

Due application for registry includes supplying the evidence, information and material, required by the Registrar: section 12 (1) *infra*. In particular

Section  
8 (1)  
Revocation  
under this  
Act.

Applica-  
tion for  
registry.

**Section  
8 (1)-(2).**

duplicate certified copies of the constitution, rules, laws and regulations of the society, must be filed with the Registrar; as must also be filed a financial statement of the society up to the last balancing day of the society, or if such balancing day be more than twelve months prior to the date of filing then up to the preceding 31st day of December. This statement must be signed by the president and secretary, or other proper officers of the society, and must be verified by their oath: section 12, *infra*. The fees prescribed in respect of the application, section 62, division I., 3, *infra*, must be paid to the Provincial Treasurer before the application will be considered: section 2 (22) *supra* and 62, *infra*. "Upon proof of the fact" means upon proof to the satisfaction of the Registrar: section 2 (23) *supra*.

Control  
of insur-  
ance funds  
must be in  
members  
or their  
annually  
elected  
represent-  
atives.

(2) No such friendly society shall be deemed to be managed and operated according to the true intent of the *Act respecting Benevolent, Provident and other Societies*, unless the persons insured in or by the society exercise, either directly or through representatives, elected for a term not exceeding three years, effective control over the insurance funds of the society; and no friendly society whatsoever, wherein the persons, who by virtue of their office have the disposition, control, or possession of the insurance funds hold such office for life, shall be eligible for registry under this Act.

Compare  
sec. 4 (2) D.

So also section 4 (2) D *supra*:—If the corporation is in effect the property of the officers or collectors thereof, or belongs to any private proprietary, or if the insurance funds of the corporation are held other than as trust funds for the members, the corporation, however incorporated,

is not entitled to registration as a friendly society, but is deemed to be required by law to be licensed for the transaction of insurance. Section 8 (2).

From the whole tenor of *The Benevolent Societies Act* it seems clear that the Act contemplated only corporations organized and administered on the representative system, that is, corporations in which the executive officers are at short intervals directly elected by the members assembled in general meeting. Thus, the declaration is to state the names of those who are to be the first trustees or managing officers, and the mode in which their successors are to be appointed. One of the original parts of the declaration is to be filed in the registry office of the county or union of counties in which the society is to hold its annual and general meetings: R. S. O. 1887, c. 172, s. 2. The society may, from time to time, appoint trustees, a treasurer, a secretary and other officers for conducting its affairs and for the discipline and management of the society; and may, from time to time, make by-laws, rules or regulations for the government and for conducting the affairs of the society, or of any branches thereof; and may, from time to time, alter or rescind such by-laws, rules or regulations: *ibid.* s. 4. That Act speaks of the executive officers as temporary, not perpetual. Thus, in section 5 (1), also in section 6 (1), the executive officers are described as "The trustees or office-bearers for the time being." These executive officers cannot, without a special mandate from the members, mortgage, sell, exchange, or lease any lands of the society: *ibid.* s. 14.

Officers of societies elective.

R.S.O. 1887 c. 172.

Section  
8 (2).  
Compare  
mutual ins.  
company.

In *New York Life Ins. Co. v. Styles* (1889), L. R. 14 App. Cases, Lord Herschel, at p. 409, says:—"In the case before us certain persons have associated themselves together for the purpose of mutual assurance; that is to say, they contribute annually to a common fund, out of which payments are to be made in the event of death to the representatives of the persons thus associated together. These persons are alone the owners of the common fund, and they and they alone are entitled to the management of it."

Society to  
have effective  
control  
over affairs

A corporation was organized under a statute that provided that the affairs of the corporation should be managed by not less than five directors or trustees elected from and by members. The application for membership contained a form of proxy which the applicant was requested to sign in blank and forward to the secretary. The secretary held by this means a great number of such proxies. By aid of the proxies a resolution was carried that the manager and secretary should thereafter be elected annually by the members and not hold office by appointment of the board of trustees. From that time the board of trustees ceased to have control; the real governing authority being the manager and secretary, who held a sufficient number of proxies to perpetuate themselves in office and conducted the business of the association as they saw fit; *Held*, a violation of law and a fraud on the members justifying dissolution of the company: *Chicago Mutual Life Indemnity Association v. Hunt*, Attorney-General, Ill. S. C. 1889, 20 N. E. Rep. 55.

"A shareholder has a clear right to relief where the directors wrongfully refuse to call a meeting for the election of new officers, and a meeting cannot be regularly called except by action of the directors. The remedy under these circumstances is by bill in equity on behalf of the corporation, or, when the obligation to call a meeting is imposed by statute or the charter, by writ of mandamus:" Morawetz on Private Corporations § 273; *Thames Haven Dock Co. v. Ross*, 4 Man. & Gr. 559.

Section  
8 2).  
Mandamus

The trustees of a society are charged with the duty of faithfully executing the trust which the laws and regulations impose upon them. They are entitled to a reasonable compensation, but any plan or scheme by which money is collected from members, by assessment or otherwise, with a view to profit by the trustees and beyond what is necessary to defray the reasonable expenses of executing the trust is a breach of trust: *State v. Standard Life Association*, 38 Ohio St., 281. Moneys wrongfully divided among officers may be recovered back: *McCarty's Appeal*, 17 Weekly Notes of Cases, (Am.) 182. The salaries of officers of voluntary societies must not, especially when the officers fix the amount of their own salaries, be out of proportion to the amount of responsibility and labor devolving upon them. Such trustees, unless specially invested with the additional capacity and authority of officers or agents, are limited in their claims for compensation to such sum as will reasonably compensate them for the time and expense incurred in going to, attend-

Salaries of  
officers.



**Section**  
**8 (2).**

ing and returning from their official meetings, and for their services while in session: Niblack on Mutual Benefit Societies, § 122. Where it is shown that the officers of a society seem to regulate their salaries rather by the condition of its expense fund than by the compensation actually earned, the court will, upon application, interfere to protect the interests of members: State *ex rel.* v. People's, etc. Assoc., 42 Ohio St. 579.

*in page 515*

Provided that, where a corporation otherwise entitled to registry under this section is in the opinion of the Registrar debarred by reason of some particular clause or clauses in the rules of the corporation, the corporation may, under the direction of the Registrar, amend its rules in like manner as provided in the second sub-section of section 4 of this Act; and thereupon the Registrar may admit the corporation to registry as a friendly society.

s. 4 (2) B.  
*Proviso*  
*supra.*

The mode of amending is as follows: The Registrar under his hand and the seal of his office directs the amendment to be made; and if, within the time limited in the Registrar's direction, the corporation files in the office where the original declaration of the corporation was filed, the said direction, and a declaration, verified by the oath of its secretary or other proper officer, setting out the amendment so directed and made in the rules with the date of such amendment, then upon proof of such filing the Registrar may admit the corporation to registry as a friendly society.



SOCIETIES INCORPORATED BY ACTS OF PARLIAMENT  
OF CANADA.

9. (1) Where a friendly society was, on or before the first day of January, 1892, incorporated by special Act or Acts of the Parliament of Canada, and by such special Act or Acts the society is authorized to undertake insurance contracts or contracts in the nature thereof, without authorization issued under *The Insurance Act* of Canada, such society shall, upon due application for registration hereunder, be entitled to be registered on the Friendly Society Register.

Societies  
exempted  
from  
authoriza-  
tion under  
the Insur-  
ance Act of  
Canada.

Two societies have been incorporated by special Acts of the Parliament of Canada and by such special Acts are authorized to undertake insurance contracts without authorization issued under *The Insurance Act* of Canada.

(I.) The Supreme Court of the Independent Order of Foresters was incorporated by 52 Vic. c. 104 (D.), for the following purposes or objects:—  
“ (a) To unite fraternally all persons entitled to membership under the conditions and laws of the society ; and the word ‘ laws ’ shall include general laws and by-laws ; (b) to give all moral and material aid in its power to its members and those dependent upon them ; (c) to educate its members socially, morally and intellectually ; (d) to establish a fund for the relief of sick and distressed members ; (e) to establish a benefit fund, from which, on satisfactory evidence of the death of a member of the society who has complied with all its lawful requirements a sum not exceeding \$3,000 shall be paid to the widow, orphans, dependents,

The Inde-  
pendent  
Order of  
Foresters.

52 Vic.  
c. 104 (D).

s. 1.

Section  
9 (1).

or other beneficiary, whom the member has designated, or to the personal representative of the member; or from which, upon the completion of the expectancy of life of a member, as laid down in the said constitution and laws, such sum shall be paid to himself; (f) to secure for its members such other advantages as are, from time to time, designated by the constitution and by-laws of the society.

- s. 2. "The head office of the society shall be in the City of Toronto": section 2; "no branch shall
- s. 3. have power to establish benefit funds under paragraphs (d) and (e) of section one of this article:"
- s. 4. section 3; "no part of the endowment funds shall be used in acquiring real estate:" section 4; "the property of each branch only shall be liable for the debts and engagements of such branch:" section 5.

- s. 6. "The surplus funds of the society shall be invested in mortgages which are a first charge on land held in fee simple in Canada, or in deposits with or in registered debentures of loan and investment companies incorporated in Canada, or in debentures of municipal or school corporations in Canada, or in securities of the Dominion of Canada or any of the Provinces thereof, or shall be deposited in a chartered bank in Canada; but the society shall sell such real estate and property as it acquires by the foreclosure of any mortgage, hypothec or lien, within seven years after it has been so acquired, otherwise it shall revert to the previous owner or to his heirs and assigns:" section 6.

Cf. section  
29 (3) *infra*.

" There shall be printed in legible type and in red ink upon every policy hereafter issued by the society, as well as upon every application therefor, and upon every receipt given for payments in connection therewith, the following words: 'The insurance undertaken by this society comes under the exception contained in section 43 of *The Insurance Act*,' applicable to fraternal and benevolent associations, and is not subject to Government inspection:" section 8.

Section  
9 (1).

s. 8.  
Cf. section  
2 (14) *supra*.

Every officer or other person who transacts business for the society, issuing policies or application for membership on which such notice is not printed shall, on summary conviction thereof before any two Justices of the Peace, incur and be liable to the penalties mentioned in section 22 of *The Insurance Act*, and every pecuniary penalty so received shall be applied in the manner provided by the said section: section 9.

s. 10.  
Cf. section  
12 (1) *pro-  
viso, infra*.

Certified copies of the constitution and changes therein are to be deposited within three months after making with the Secretary of State and the Superintendent of Insurance: section 10. "Nothing herein contained shall be held to exempt the society from the effect of any legislation hereafter passed by the Parliament of Canada in respect to any insurance powers exercised by friendly societies:" section 11.

The Grand  
Orange  
Lodge of  
British  
America.  
53 Vic. c. 105  
(D).

II. The Grand Orange Lodge of British America was incorporated by 53 Vic. c. 105 (D.). The Act is, in its terms, very similar to the Act 52 Vic.

Section  
9 (1).

s. 2.

s. 3.

c. 104 (D.), incorporating the Supreme Court of the Independent Order of Foresters. The important variations are as follows: The head office of the Association shall be in the City of Toronto, or such other place in Canada as is from time to time determined by the Association: section 2.

"Subject to the constitution and laws of the Association, lodges under the names of Provincial Grand Lodges, County Lodges, District Lodges, and Primary Lodges may from time to time be established under the title designated in the warrant constituting such lodges; and the said lodges, if established within Canada, may themselves be and become bodies corporate under such provisions and conditions and with such powers as the association by its constitution and laws from time to time determines; provided always that such powers shall not be in excess of those conferred on the association by this Act, and each of such lodges shall be so incorporated under the corporate name of "The Loyal Orange Lodge number (*giving the number of the lodge*);" and upon being established and before proceeding to act as such corporation, the association shall cause to be registered at full length in the registry office of the city, county or registration division within which such lodge is established, a declaration stating the fact of such establishment, the date of the instrument effecting it, and the corporate name of such lodge:" section 3.

Due

application

"Due application" includes payment to the Provincial Treasurer of the fees prescribed in sub-section 3 D. of Division I. of section 62 *infra*,

and the application must be accompanied by the evidence and material required by sections 12 and 13 (*vide infra*). Section 9 (2).

(2) Any corporation not provided for elsewhere herein, which has, by virtue of an Act of the Parliament of Canada, an insurance and provident society or association, or an insurance or guarantee fund in connection with the corporation, shall, upon due application for registry under this Act, be entitled to be registered on the Friendly Society Register. Insurance and benefit societies or funds in connection with sundry corporations.

Under this comprehensive clause various corporations are entitled to register as friendly societies.

I. *The Grand Trunk Railway of Canada* G. T. R. of Canada  
*Superannuation and Provident Fund*, to which the Superannuation and Provident Fund.  
Railway Company contributes, was established 37 Vic. c. 65 (D.) (amended by 41 Vic. c. 25 (D.), for superannuation of servants of the company, for payment of allowances to such servants in case of sickness, or to their widows or children or representatives in case of their death: section 11. The Grand Trunk Railway Company of Canada was empowered to make, either separately or in connection with the Superannuation and Provident Fund authorized to be created by 37 Vic. c. 65, (D.), provision for insurance against accident to its employees, which may include insurance against death, the payment of allowances during any period when they may be unable from accident or sickness to follow their ordinary calling, and the providing of suitable medical attendance: section 2. It was further provided that the provisions of the Act establishing the Superannuation and Provident

Section  
9 (2).

Fund, as regarded the scheme and the management thereof, should apply to the Insurance Fund created, whether the Insurance Fund was organized in connection with the existing Superannuation and Provident Fund or separately: section 4.

Management  
of  
fund.

The organization and management of the fund stand as follows:—The Grand Trunk Railway prepared a scheme, sealed with the corporate seal, and containing rules and regulations for the formation, investment, management and distribution of the fund. Power to alter the rules and regulations, from time to time, is reserved by the said scheme and the rules and regulations thereunder: section 17. The Fund is vested in and belongs to the committee for the time being having the management of the fund under the provisions of the Act establishing the fund, and of the rules and regulations for the time being in force. Such committee may sue and be sued in the name of their secretary, and shall invest, manage and distribute the fund in accordance with the provisions of the Act constituting the same and the said rules and regulations: section 14.

The committee is the "branch" within the proviso under sub-section 4 (a) of section 2 of *The Insurance Corporations Act*; and, therefore, this committee is the society or corporation for the purposes of the Act: and it is the duty of the committee to keep the distinct and separate funds, books, accounts and vouchers required by the said section 2 (4)a, and in other respects to conform to

all the provisions of this Act relating to societies undertaking contracts of insurance in Ontario.

Section  
9 (2).

A by-law of a railroad relief association, requiring the member to release the railroad company from any claim for damages before applying to the association for relief, is not against public policy, as it simply puts a claimant to his election whether he will look to the railroad company or the relief association for damages: *Owens v. B. & O. R. R.*, (U. S. C. C.) 1888, 35 Federal Reporter, p. 715; compare *R. S. O.* 1887, c. 141, s. 16.

By-laws  
protecting  
company  
from claim  
not void.

II. *The Great Western Railway Superannuation and Provident Fund*.—This was established by virtue of 43 Vic. c. 49, (D.) and similar provisions to those just noted were enacted relating to the rules and regulations governing the same and to the committee of management thereof, and the same remarks apply equally to this as to the Grand Trunk Railway of Canada Superannuation and Provident Fund: *vide* 43 Vic. c. 49 (D.), ss. 2-7.

G. W. R.  
Super-  
annuation  
and Provi-  
dent Fund.

III. *The Canadian Pacific Railway Employees' Relief Association*.—In this instance a separate corporation was created by 48 & 49 Vic. c. 23 (D.), the objects of which are to extend relief in cases of sickness, injury, old age, accident, or death to the employees of the Canadian Pacific Railway Company. The Company guarantees the faithful and true performance of obligations of the Company, section 3. The powers are exercised by a committee of management consisting of ten persons, section 4. The superannuation and provident funds, composed

C. P. R.  
Employees'  
Relief As-  
sociation.

**Section  
9 (2).**

of contributions of members, of the company and of others, are vested in a board of five trustees, section 5. The committee of management, by by-law or regulation, define the benefits which members of the association and their families may derive from the funds of the association and prescribe the terms and conditions on which members and beneficiaries shall become entitled to such benefits. By-laws and regulations, and amendments thereof, are to be approved by the Company, section 8. The head office of the Association is in the City of Montreal, section 10.

For purposes of the present Act the Association is the corporation meant in this sub-section of section 9.

**Pension  
Fund  
Societies**

This group includes The Pension Fund Society of the Bank of Montreal, incorporated by 48 & 49 Vic. c. 13 (D.) and The Guarantee and Pension Fund of the Dominion Bank, incorporated by 50 & 51 Vic. c. 55 (D.), and also any pension fund society established under the provisions of the *Act to empower the employees of incorporated companies to establish pension fund societies*: 50 & 51 Vic. c. 21 (D.) The president, vice-president, general manager, assistant general manager, or person acting as such, cashier, assistant cashier, and inspector of any corporation legally transacting business in Canada, under any Act of the Parliament of Canada, or any two of the said officers, with any of the superior officers, may at any time establish a pension fund society in connection with the administration of such corpo-



ration under the regulations and subject to the supervision and control, specified in the Act. Thereupon the said officers and the employees of such corporation who join the said society shall be and be designated as the pension fund society of the corporation in whose service they are, called "the parent corporation" and under such name shall be and become a body corporate and politic, section 1. The officers of any corporation who desire to establish a pension fund society under the provisions of the Act, and who are by section 1 authorized thereto must make and sign a declaration in duplicate in the following form, or using equivalent words, section 2.

Section  
9 (2).

#### "DECLARATION OF INCORPORATION.

"We, the undersigned (*describe the officials establishing the society*) do hereby declare that we have associated ourselves together for the purpose of establishing a pension fund society in connection with the administration of the under the provisions of *The Act to empower the Employees of Incorporated Companies to establish Pension Fund Societies*.

Declara-  
tion.

"That the proposed corporate name of the society shall be the Pension Fund Society of the

That the chief place of business of the said society is to be within the of

And we make this declaration for the purpose of establishing the said society under the said Act.

**Section**  
**9 (2).**

In witness whereof we have executed these presents in duplicate at \_\_\_\_\_ in the presence of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_

Signed in the presence }  
of } (Signature)

Organiza-  
tion.

This declaration must be filed in the office of the Secretary of State of Canada and in the office of the Registrar of Deeds for the registration division within which the chief place of business of the society shall be situated: section 2 and schedule to Act. The officers who make and sign the declaration are the provisional directors of the society and hold office until their successors are appointed: section 2. Notice of the incorporation of such society must be given in the *Canada Gazette* for four weeks. Such notice must contain the exact name adopted by the society, its chief place of business, the name of the secretary thereof upon whom legal process may be served. Notice of any change in place or secretary is given in the same manner: section 3. Provisional directors can call the first meeting of the society. At this meeting directors may be elected and by-laws passed. Copies of all by-laws and changes therein must be filed within two weeks after passing, with the Secretary of State: section 4. The affairs of the corporation are administered by a board of directors. The number, qualification and manner of election are fixed by by-law. Other officers may be appointed in such manner as directed by by-laws which may also provide for their compensation and determine their powers and duties:

section 5. Each contributory to the funds of the society, including the parent corporation, shall have such right to vote at general meetings as is provided by the by-laws : section 5 (2). The society has power by means of voluntary contribution or otherwise, as the by-laws provide, to form a fund out of which to provide for the support and payment of pensions to officers and employees of the parent corporation, incapacitated by age or infirmity, and upon the death of such officers or employees may pay annuities or gratuities to their widows and minor children or other surviving relatives in such manner as by such by-laws may be provided: section 6. The society may make by-laws, not contrary to law, for formation and maintenance of the fund, for the management and distribution thereof, and may thereby define and regulate the rights, powers and duties of the society and of individual members thereof, and may provide for penalties and forfeitures. The society may in accordance with the by-laws alter, amend, or repeal by-laws. But no by-law shall have any force or effect unless the same has been sanctioned by the board of directors of the parent corporation: section 6. All the revenue of the society shall be devoted exclusively to the maintenance of the society and the furtherance of the objects of the fund: section 7. The parent corporation may contribute to the fund: section 8. The interest of any member in the funds of the society is not transferable or assignable in any manner whatsoever by way of pledge, hypothecation, sale or

Section  
9 (2).

Powers of  
society.

LAW LIBRARY

Section  
9 (3).

security: section 9. The society is to make returns when required: section 10.

When  
within  
this Act.

Only so far as, by the constitution and by-laws of any pension fund society, the society's payments to members are made matters of contract, are such organizations within the intent of this Act: section 4 (2) B, *supra*.

Due appli-  
cation.

Due application includes payment to the Provincial Treasurer of the fees prescribed in subdivision 4 of Division II. of section 62 *infra*; and the application must be accompanied by the evidence and material required by sections 12 and 13: *vide infra*.

Trade  
union  
insurance  
benefit  
societies.

(3) Any lawfully incorporated Trade Union in Ontario which, under the authority of the incorporating Act, has an insurance or benefit fund for the benefit of its own members exclusively, shall, upon due application for registry hereunder, be entitled to be registered on the Friendly Society Register.

R. S. C. c.  
131 Trade  
Union Act,  
s. 2.

A "trade union" means such a combination, whether temporary or permanent, for regulating the arrangements between workmen and masters, or for imposing restrictive conditions upon any trade or business, as would, but for *The Trade Union Act*, have been deemed to be an unlawful combination by reason of some one or more of its purposes being in restraint of trade: R.S.C. c. 131, s. 2. Acts in force in Canada providing for the incorporation of charitable, benevolent and provident institutions do not apply to trade unions: section 5. Trade unions obtain corporate existence by registration in accordance with the provisions of *The Trade*

*Union Act*: section 6. A certificate of such registration is sufficient proof that the trade union is lawfully incorporated for the purposes of the Act: section 14 (5). The registered rules of the trade union must set out every object for which the trade union is to be established, the purposes for which the funds thereof shall be applicable, and the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures which may be imposed on any member of such trade union: Schedule 2, R. S. C. c. 131.

Section  
9 (3).

s. 14 (5).

Second  
Schedule

Although a trade union may have, under the authority of *The Trade Union Act*, an insurance or benefit fund for the benefit of its own members exclusively, no provision was made in the incorporating Act whereby a member might enforce his demand. For it is enacted by section 4 of *The Trade Union Act* that "nothing in this Act shall enable any court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements: \* \* \* (3) Any agreement for the application of the funds of a trade union to provide benefits to members." Jurisdiction over any contract in the nature of insurance entered into by the trade union and member falls within the jurisdiction that the Province exercises over civil rights. Accordingly, after registry on the Friendly Society Register of any trade union its insurance contracts are legally in the same position as contracts of other friendly societies.

Section  
9 (3).Due appli-  
cation.*cf. page 576*

Due application for registry includes payment to the Provincial Treasurer of the fees prescribed in sub-division 4 of Division II. section 62, *infra*. The application must be accompanied by the material and evidence required by sections 12 and 13, *infra*.

## Proviso.

Provided that, where any organization of workmen not entering into a formal contract of insurance with its members, provides by its constitution, by-laws or rules for the assistance, relief or support of its members, the Registrar may, by writing, under his hand and the seal of his office, declare the organization exempt from the operation of this Act; and such certificate shall remain valid until by like writing revoked; and the organization so exempted shall not be subject to any penalty imposed by this Act.

The Registrar has discretion to grant a certificate of exemption from the operation of this Act to any organization of workmen not entering into a formal contract of insurance. The payments of such an organization are on the border line between contractual obligations and donations. Until such certificate of exemption is revoked the organization is exempted from any penalties imposed by the Act to which it might otherwise be liable.

Insurance  
gratuity  
fund  
created by  
an Act of  
Canada.

(4) Any corporation in Ontario which at the passing of this Act has under authority of an Act of Canada created a fund for paying a gratuity on the happening of death, sickness, infirmity, casualty, accident, disability, or any change of physical or mental condition, shall upon due application for registry hereunder be entitled to be registered on the Friendly Society Register.

This sub-section admits of the registration on the Friendly Society Register of certain corporations which have, under authority of an Act of

Section  
9 (4).

Canada, created a fund for paying a gratuity on the happening of an event within sub-section 12 (a) of section 2 *supra*; while the corporations entitled to register under sub-section 2 of this section must be engaged in undertaking contracts of insurance or in the nature of insurance. As the Act deals only with contract, a corporation having such a gratuity fund is not compelled to register on penalty of making its continued existence as a benefit society unlawful. But such a corporation after registry is subject to all the provisions of the Act affecting friendly societies generally. The Board of Trade of the City of Toronto is an example of a corporation within the meaning of this sub-section. By authority of the Act, 49 Vic. c. 56 (D.), the Board of Trade has created a gratuity fund, whereby a gratuity is provided for the representatives of a deceased member. The members of the corporation may be assessed to create and keep up the fund, but assessments must not exceed \$40 yearly per member: 49 Vic. c. 56, s. 6. The corporation has power to pass by-laws regulating assessments, the management of the fund, the disposition thereof or payment therefrom to the representatives of the deceased member, and for defining the meaning of the term "representatives," and designating the persons and proportions in favour of whom and in which such gratuity shall be payable upon the death of any member: *ibid.* section 7. The gratuity is not liable to the debts or liabilities of any member except that any indebtedness of the member to the fund itself, may be deducted from the gratuity: section

49 Vic. c. 56  
(D) Toron-  
to Board of  
Trade.

Section  
9 (4).

8. The corporation is declared to be within the exception of section 43 of *The Insurance Act* of Canada: *ibid.* section 10.

Due application includes such information, evidence and material as the Registry Officer shall require to be furnished and also the payment to the Provincial Treasurer of the fees prescribed in Division I. 3, D. of section 62. Application is to be made according to a form that is supplied by the Registry Officer on request: section 12 (1) *infra*. The financial statement required by section 13 (*infra*), must accompany the application. A duplicate of the financial statement must be filed in the office of the Clerk of the Process at Toronto: section 15, *infra*.

#### STATUS OF FOREIGN CORPORATIONS.

Foreign  
Corpora-  
tions.

It is an established rule of private international law that a corporation duly created according to the laws of one state may sue and be sued in its corporate name in the courts of other states: *The Dutch West India Company v. Moses*, 1 Str. 611; *Lindley on the Law of Companies*, 5th ed. p. 909.

It has been held that as no state can validly authorize a body corporate to transact business out of its own territory, no corporation can sue in a foreign country on a contract entered into there: *Bank of Montreal v. Bethune*, 4 U. C. Q. B. 341; *Genesee Mutual Ins. Co. v. Westman*, 8 U. C. Q. B. 487; *Union Rubber Co. v. Hibbard*, 6 U. C. C. P. 77. But if carefully examined, these cases only decide what is unquestionably true,



viz., that a corporation formed to carry on a particular business in one country exceeds its powers if it carries on a similar business out of that country: Lindley, 5th ed. p. 910, note (k). The true question is not whether one state can legally grant powers of contracting, etc., in another State, but to what extent does one state recognize the acts of another. The right of a corporation to sue in a foreign country, as well as its right to contract in a foreign country, are both based, not on the law of the State creating the body corporate, but on the extent to which the foreign country chooses to recognize that law. See also *Douglas v. Atlantic Mutual Life Insurance Co. of Albany, New York*, 25 Gr. 379. The rule of law above stated is said to exist by the comity among States: Morawetz, *Law of Private Corporations*, § 960. "We think it well settled that, by the law of comity among nations, a corporation created by one sovereignty is permitted to make contracts in another and sue in its courts; and that the same law of comity prevails among the several sovereignties of the Union": *per* Chief Justice Taney in *Augusta v. Earle*, 13 Pet. 519, 592. "In harmony with the general law of comity obtaining among the States composing the Union, the presumption should be indulged that the corporation of one State, not forbidden by the law of its being, may exercise within any other State the general powers conferred by its own charter, unless it is prohibited from so doing, either in the direct enactments of the latter State, or by its public policy, to be deduced from the general course of legislation, or from the settled

**Section  
10 (1).**

adjudications of its highest court:" by Justice Harlan in *Christian Union v. Yount*, 101 U. S. 356. Any foreign corporation satisfying the requirements of *The Insurance Corporations Act* may be admitted to registration and thereafter is entitled to transact the business of insurance in Ontario.

## FOREIGN FRIENDLY SOCIETIES.

**Foreign  
friendly  
societies.**

**10.**—(1) Where a solvent friendly society other than as in the next preceding section included, being duly incorporated, organized, managed, and operated elsewhere than in Ontario, and having in Ontario an agent duly authorized by power of attorney to receive process in all actions and proceedings against the society, was before the eleventh day of March, 1890, in actual *bona fide* operation in Ontario, and at the date of application for registry has a subsisting membership of at least five hundred persons, such persons being *bona fide* residents of Ontario, then, the Registrar upon proof of such facts, and upon proof that the society, if incorporated, organized, managed and operated in Ontario, would be a provident society within the meaning of *Act respecting Benevolent Provident and other Societies* authorized to enter into such contracts of insurance as are by the said society undertaken, the Registrar may, on due application, admit the society to registry as a friendly society.

Societies incorporated under statutes of Ontario, e.g., R. S. O. 1887, c. 172, obtain registry, by virtue of section 8, *supra*; other societies which, although incorporated in Ontario, derive their powers from an Act of the Parliament of Canada, register under sub-sections 2, 3 and 4 of section 9, *supra*. And societies incorporated by special Acts of the Parliament of Canada obtain registry under sub-section 1 of section 9, *supra*. Any other insurance corporation, not being a licensed

company, or a corporation required by law to be licensed, must qualify for registration under the present section. The following are the requirements:

Section  
10 (1).

(a) The society must be solvent, that is, the society either must have no present liabilities apart from actuarial liabilities (*vide* section 2 (16), *supra*), or must have immediately realizable assets adequate to discharge its present actual liabilities: sub-section 2 of this section, *infra*. A financial statement of the affairs and condition of the corporation up to the last usual balancing day, if not more than twelve months before the filing of the statement, or up to the preceding 31st day of December, and verified by the oaths of the officers, must accompany the application for registry.

Society to  
be solvent.

(b) The society must have in Ontario an agent duly authorized by power of attorney to receive process in all actions and proceedings against the society. The power of attorney must accompany the application and must be under the seal of the corporation and be signed by the president and secretary or other proper officers thereof in the presence of a witness who must make oath or affirmation to the due execution thereof. Some person cognizant of the facts must also make affidavit as to the official position in the corporation held by the officers executing the power of attorney: section 14 (1), *infra*. The power of attorney must declare at what place in the Province the chief agency of the corporation is established and must expressly authorize the attorney to receive

To have  
authorized  
attorney in  
Ontario.

Section  
10 (1).

service of process and notices from the Registry Officer and must also declare that such service shall be legal and binding on the corporation for all purposes: section 14 (2), *infra*. A duplicate of the power of attorney duly verified as above and of the financial statement must be filed at Toronto in the office of the Clerk of the Peace: section 15, *infra*; For form of power of attorney, see Appendix B.

To have  
been in  
operation  
in Ontario  
before 11th  
March, 1890

(c) The society must have been *bona fide* in operation in Ontario before the 11th day of March, 1890. No society incorporated after the 10th day of March, 1890, under the *Benevolent Societies Act*, has authority to undertake contracts of insurance. A foreign society is for the purpose of this Act regarded as in no better position than one incorporated in Ontario.

To have at  
date of ap-  
plication  
500 mem-  
bers in  
Ontario.

(d) The society must have at the date of application for registry a subsisting membership of at least five hundred persons who are *bona fide* residents of Ontario. Unless the time for delivery of application be extended by the Registry Officer, the society must make application for registry on or before the 30th day of June, 1892, section 12, *infra*.

(e) The society must show that if incorporated, organized, managed and operated in Ontario, it would be a provident society within the meaning of *The Benevolent Societies Act* authorized to enter into such contracts of insurance as are by the society undertaken. Therefore any foreign society either:—

- (1) Undertaking insurance other than con- Section  
10 (1).  

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Certain  
societies  
ineligible.  
tracts of insurance made with its own  
members exclusively for sickness, disability,  
mortuary or funeral benefits, or for a sum  
or collective sum not exceeding \$3,000 in  
all, payable at the death of the assured, or  
for the fidelity of members as financial  
officers of lodges, section 4 (2) C *supra*; or,
- (2) Undertaking contracts of assessment en-  
dowment, section 4 (2) C proviso a, *supra*;  
or,
- (3) Which is in effect the property of the  
officers or collectors thereof, or which be-  
longs to any private proprietary, or which  
is conducted as a trading or mercantile  
venture, or for the purpose of commercial  
gain, section 4 (2) D. *supra*; or,
- (4) Being a society the insurance funds of  
which are held other than as trust funds  
for the members: section 4 (2) D. *supra*; or,
- (5) Being a society in which the persons  
insured do not exercise directly or through  
elected representatives, effective control  
over the insurance funds of the society: "  
section 8 (2) *supra*; or,
- (6) Being a society wherein the person who,  
by virtue of their office, have the disposition,  
control or possession of the insurance funds,  
hold such office for life, section 8 (2) *supra*,  
*is not eligible for registry as a friendly*

**Section  
10 (1).**

society under this Act, although in other respects it may satisfy the requirements of this section.

**Payment  
of fees.**

(f) The society must pay the fees prescribed in sub-division 3 D of Division I. of section 62, *infra*. The society must prove to the satisfaction of the Registrar that it is eligible under the foregoing conditions for registry as a friendly society. The Registrar renders his decision in writing and a certified copy of his decision is furnished to the society: section 50, *infra*. An appeal may be taken by the society from the decision of the Registry Officer: section 51, *infra*.

Provided that a society duly registered under *The Friendly Societies Act, 1875*, or any Act consolidated thereby or any amending Act thereto, passed by the Parliament of the United Kingdom, shall be deemed to be duly incorporated for purposes of registration under this section.

**Societies  
under 38 &  
39 Vic. c. 60  
(Imp.)**

The organization of a society registered under *The Friendly Societies Act, 1875*, (Imp.) is as follows:—It is the duty of the society to appoint from time to time one or more trustees of the society and to send to the Registrar a copy of the resolution appointing a trustee, signed by the trustee so appointed, and by the secretary of the society: section 14 (b). The trustees, with the consent of the committee of management, or of a majority of the members present at a general meeting may from time to time invest the funds of the society: section 16 (1). The society may purchase or lease land for the purposes of the society in the names of the trustees for the time being:

s. 14 (b)]

s. 16 (1)

section 16 (2). All property belonging to a society vests in the trustees for the time being: section 16 (3). The trustees of any society or branch, or any other officer authorized by the rules thereof may sue or be sued in any court in their proper names, without other description than the title of their office: section 21 (1). A member or person claiming through a member may sue the society in the name, as defendant, of any officer or person who receives contributions or issues policies on behalf of the society within the jurisdiction of the court in which the suit is brought, with the addition of the words, "on behalf of the society" (*naming the same*): section 21 (2). No legal proceeding shall abate or be discontinued by the death, resignation, or removal from office of any officer, or by any act of such officer after the commencement of the proceedings: section 21 (3).

Section 10 (1), (2).

s. 16 (2)

s. 16 (3)

s. 21 (1), (2), (3)

Legal proceedings by and against society.

For purposes of registration under *The Insurance Corporations Act* a society thus constituted is deemed to be duly incorporated.

(2) "Solvent society" in this section shall mean a society respecting which it has been made to appear to the Registry Officer that the society has no present liabilities apart from actuarial liabilities, or has immediately realizable assets adequate to discharge its present actual liabilities.

Meaning of solvent society in s. 10.

see page 5-11

By actuarial liabilities are meant the liabilities chargeable against an insurance corporation in respect of its insurance contracts prior to their maturity. The solvency of a friendly society does not mean actuarial solvency, that is solvency, when the actuarial liabilities of the society are charged or



Sections  
10 (2) 11 (1).

treated as present liabilities: section 2 (16) *supra*; but means that the society has either no present debts, or has immediately realizable assets adequate to discharge its present actual liabilities.

#### THE REGISTRAR OF FRIENDLY SOCIETIES.

Powers and  
duties of  
the Registrar.

11.—(1) The duty of determining, distinguishing and registering those friendly societies which are legally entitled to registry, and of granting registry accordingly, shall devolve upon the Registrar of Friendly Societies, who may be the Inspector of Insurance, or such other person as the Lieutenant-Governor in Council shall appoint, and such assistants may, by the same authority, be appointed as from time to time the case requires; Provided, the first Registrar of Friendly Societies shall be the Inspector of Insurance.

The Registrar has power to call for what information, material and evidence to him seems proper in order to reach a decision on any matter before him: section 2 (23) *supra*; section 12 (1) *infra*. He may take or receive affidavits or depositions and may examine witnesses upon oath: section 11 (2) *infra*. In certain disputed cases affecting the status of a corporation the Registrar decides both as to the law and the facts: section 49 (3) *infra*. His decision is rendered in writing: section 50 (1) *infra*. His decisions are subject to appeal: section 51 (1) *infra*. The mode of appeal is prescribed in section 51 *infra*. The appellant must give proper security for costs, and if a corporation within sections 53 and 54, must, pending appeal, comply with those sections; ten clear days' notice of application for leave to appeal and of any subsequent proceeding must be given the Registrar: section



51 (1) and (2) *infra*. Upon presentation to the Registrar of final judgment on appeal, if any, the Registrar causes an entry to be made in the Register in accordance with the terms of the judgment: section 51 (3) *infra*. For the effect of certificates and other documents under the hand and seal of the Registrar, see section 26 (4), (5) and (7) *infra*. Mandamus will not lie to compel the Registrar to admit a society to registry. *Dwelling House Ins. Co. v. Wilder* (Kansas, S.C., 1889), 18 Ins. Law Journal 235; *in re Schmitt* (N. Y. S. C., 1890), 10 N. Y. Supplement 583; *People ex rel v. Fairman*, 92 N. Y. 656; *State ex rel v. Moore*, 42 Ohio St. 103; *re Barlow* 30 L. J. Q. B. 271; Shortt on Informations, 232; see also notes under section 7 (1) *supra*.

Sections  
11 (1-3),  
12 (1).

(2) For purposes of his duties under this Act, or under any other Act relating to friendly societies, the Registrar may require to be made, and may take and receive affidavits and depositions and may examine witnesses upon oath.

Affidavits for use under this Act may be sworn to before any Justice of the Peace, notary public or commissioner in the High Court for taking affidavits: sections 47 (2) *supra*.

(8) The salary of the Registrar shall be such sum per annum as the Legislature shall from time to time determine.

Salary of  
Registrar.

#### PROCEEDINGS TO OBTAIN REGISTRY.

**12.** (1) Applications of insurance corporations for initial registry under this Act, shall be made according to a form to be supplied by the Registry Officer on request, and the applicant shall deliver to the Registry Officer at his office the application, duly completed, together with such evidence as the form by its

Applica-  
tions for  
registry.

**Section  
12 (1).**

terms requires, and the applicant shall furnish such further information, material and evidence, or give such public notice of the application as the Registry Officer shall direct; in the case of corporations transacting or undertaking, or offering to undertake or transact insurance in Ontario at the passing of this Act, such corporations shall make due application for registry on or before the thirtieth day of June, 1892.

For the forms of application of insurance corporations for initial registry on the Insurance License Register or on the Friendly Society Register, see Appendix B.

"Due application" includes such information, evidence and material as the Registry Officer shall require to be furnished (see, also, proviso to this sub-section) also the payment to the Provincial Treasurer of the fees prescribed in respect of any application: section 2 (22), *supra*. Proof of any matter or thing is proof to the satisfaction of the Registry Officer: section 2 (23), *supra*. All fees are payable direct to the Provincial Treasurer; and receipts therefor must be filed with the Registry Officer. Until the fee has been paid an application will not be considered; and before the certificate of registry issues the fees therefor must be paid: section 62 *ad fin*. For the tariff of fees, see section 62, *infra*.

Time  
within  
which  
applica-  
tion to be  
made.

Unless the time be extended as in the next sub-section provided, corporations transacting insurance in Ontario at the passing of the Act must make application for registry on or before the 30th day of June, 1892. The application must be prosecuted in good faith, and registry obtained on

or before the 31st day of December, 1892, after which date an unregistered corporation can not lawfully undertake any contract of insurance in Ontario: section 27 (1), *infra*.

Section  
12 (1).

Provided that the material required of a friendly society by this sub-section shall include duplicate certified copies of the constitution, laws, rules and regulations of the society, and also Ontario branches thereof, which documents shall be filed with the Registrar, as shall also all amendments thereto made from time to time thereafter.

If the society, being incorporated elsewhere than in Ontario, is within the intent of section 47, *infra*, then at the time of filing the annual statement of its condition and affairs as required by the said section, the society must file a declaration that in its charter, act of incorporation, deed of settlement, or instrument of association, and in its constitution and by-laws made thereunder, no amendment or change has been made affecting its insurance contracts, undertaken or to be undertaken. If, however, change has been made, the declaration must clearly specify the change; and that the Registrar has been duly notified of the amendment or change: section 16, *infra*. Filing of certified copies of the amended constitution or by-laws or other instrument in the office of the Registrar will be due notice to the Registrar.

Changes in  
constitution,  
etc. to  
be declared

If it is intended that amendments from time to time made in the rules of the society shall be read into existing certificates it must be so stated specifically in the certificate or instrument of contract. In *Hobbs v. Iowa Mutual Benefit Association*, 20

Effect of  
amend-  
ments on  
certifi-  
cates  
already  
issued.

Section  
12 (1).

Ins. Law Jour., 434, at the time the certificate of membership was issued; H. was a car-sealer, but at the time of his death he was a car-coupler, and had been for about three months. He was fatally injured while engaged as coupler. At the time the certificate was issued there was a by-law defining the occupations in which members might not engage, among which was that of car-coupler. The contract of insurance contained nothing in regard to a change of occupation by the member; nor did the by-law state the effect which would follow upon a member engaging in a hazardous occupation. After the issuance of the certificate of membership, the association adopted a new by-law excluding among other avocations that of car-coupler from benefits if death should occur from such avocation. The association contended that this new by-law was binding on H. It was held that the new by-law did not become part of H.'s contract, and that the association was liable, there being in the original agreement no authorization of a material change in its provisions or conditions. If the association wished to bind members to its subsequent acts it must so state specifically in the original contract.

Extension  
of time.

(2) On sufficient cause shown and upon the payment of the fee hereinafter prescribed, the Registry Officer may, by writing under his hand and the seal of his office, extend the time for the delivery of an application or for the prosecution or completion of an application already delivered or tendered.

Interim  
certificate  
of registry.

Upon proof that a corporation has by accident or unavoidable cause been prevented from fully complying with the provisions of the Act within

the time prescribed, the Registry Officer may, by <sup>Section 12 (2), 13.</sup> writing under his hand and the seal of his office, grant for a time limited therein, an *interim* certificate of registry. An *interim* certificate of registry may, in like manner be further extended for a limited time. But in default in either case of renewal of registry before the expiry of the time so limited the corporation is deemed to be unregistered: section 21, *infra*.

For tariff of fees payable for extension, or certificate of *interim* registry, see section 62, *infra*.

**13.** The applicant corporation, not being a corporation with- <sup>In certain cases financial statement to accompany application.</sup> in the intent of sections 5 or 6 of this Act, shall further deliver to the Registry Officer a statement in such form as is required by the said officer of the financial condition and affairs of the corporation on the 31st day of December, then next preceding, or up to the usual balancing day of the corporation, if such balancing day is not more than twelve months before the filing of the statement, and such statement showing the corporation to be solvent shall be signed by the president and secretary or other proper officers of the corporation, and shall be verified by their oath.

Insurance licensees of the Province, or corporation authorized by a document of authority under R. S. C. c. 124 to transact insurance, are not required to file a financial statement with the application for registry. It is presumed that the Dominion Department of Insurance has made sufficient inquiry into the financial condition of the corporations authorized by it; similarly a Provincial licensee must have satisfied the requirements of the Provincial law before license was issued.

**Section  
13.****Contents of  
statement.**

All other corporations making application for registry must file with the application a statement of the financial condition of the corporation. This statement must be in the form required by the Registry Officer. The statement may be up to the usual balancing day of the corporation, if such balancing day is not more than twelve months before the filing of the statement. If the balancing day is more than twelve months before the filing of the statement, the statement must be of the condition and affairs of the corporation on the 31st day of December, then next preceding. The statement must be signed by the president and secretary or proper officers of the corporation. If the statement is signed by officers other than the president and secretary, the corporation must show that the officers signing the statement are the proper officers to sign such statement. The statement must further be verified by the oaths of the officers signing it.

**False or  
erroneous  
statement.**

The statement must on its face show the society to be solvent. A solvent society means a society respecting which it has been made to appear to the Registry officer that the society has no present liabilities apart from actuarial liabilities, or has immediately realizable assets adequate to discharge its present actual liabilities: section 2 (16) *supra*. The Registry Officer determines whether the society is solvent according to the statement produced. If insolvent, the society is not admitted to registry: cf. section 31 (1) *infra*. If the state-

ment be afterwards discovered to be erroneous or fraudulent, the registry of the corporation may be suspended or cancelled by the Registry Officer: section 25 (1) *infra*. An appeal may be had from the decision of the Registry Officer that the corporation is or is not entitled to registry, or upon any suspension, revivor, or cancellation of registry by him: section 51 (1) *infra*.

Section 13.

A duplicate of the statement, verified as above, must also, in the case of foreign friendly societies, be filed at Toronto in the office of the Clerk of the Process: section 15, *infra*.

The amount payable by a friendly society under its contract, if in dispute, is *prima facie* the maximum amount stated or indicated in the contract, and the onus is on the society to prove the contrary: section 41 (1) *infra*. The claimant can, by inspection of the statements filed in the office of the Registrar of Friendly Societies approximately test any allegation of the society that the funds of the society were not sufficient to pay the maximum. The society will not be allowed to impeach the truth of the statement upon which it was admitted to registry. To hold otherwise would be to allow the society to profit by its own fraud. For direct inspection of the society's books by the claimant, see *infra*, section 46.

Statement as evidence for claimant.

Before renewal of the certificate of registration: section, 20, the society is required annually before the 1st day of March to file in the office of the Registrar a copy of the summary statement of the result of the audit, signed and certified by the

Annual statement before renewal of registry.



Section  
14 (1).

auditors, section 29 (1) *infra*; and it is further the duty of the presiding officer, the secretary and treasurer of every registered friendly society within sections 8 and 10 of this Act, to prepare annually on the 1st day of January or within two months thereafter, in such form as may be required by the Registrar, a statement of the financial condition and affairs of the society for the purposes of the Act, and having signed and verified it under oath, to file the said statement in the office of the Registrar on or before the 1st day of March then next ensuing: section 47 (1) *infra*.

Power of attorney to receive service of process must accompany applications in certain cases.

11. (1) Where any corporation applying for registry has its head office elsewhere than in Ontario, its application for registry shall be accompanied by a power of attorney from the corporation to an agent resident in Ontario; the power of attorney shall be under the seal of the corporation, and be signed by the president and secretary or other proper officers thereof in the presence of a witness, who shall make oath or affirmation as to the due execution thereof; and the official positions in the corporation held by the officers signing such power of attorney shall be sworn to or affirmed by some person cognizant of the facts necessary in that behalf.

See Appendix B. for form of Power of Attorney. Compare R. S. O. 1887, c. 167, s. 53 (1), as to insurance companies not incorporated by Provincial authority; and R. S. C. c. 124, s. 12 (6), as to filing in the Department of Finance a power of attorney to an agent in Canada.

The head office of a corporation means the place where the chief executive officers of the corporation transact its business: section 2 (20) *supra*.



The power of attorney must be from the corporation to an agent resident in Ontario. This agent is therefore the chief agent of the corporation in Ontario. The power of attorney must be under the seal of the corporation; must be signed by the president and secretary or other proper officers of the corporation in the presence of a witness. The witness must make oath or affirmation of the due execution of the power. The official positions held in the corporation by the officers executing the power shall be sworn to, or affirmed, by some person cognizant of the facts. If the chief agent be changed a similar power of attorney from the corporation to its new agent must be filed: section 16, *infra*.

Section 14 (1), (2).

Power of attorney how executed and witnessed.

"The general agents of a foreign company doing business in this country must, I think, for the purpose of receiving premiums, be regarded in the same light as the company themselves, and we must, I think, hold that the payment made to such agents is the same as if made at the head office abroad, and that the knowledge and information brought home to the general agents at the head office in this country must be regarded in the same light as if it was possessed by and brought home to the head office in the foreign country": *per* Gwynne, J., in *Campbell v. The National Life Insurance Co.*, 24 U. C. C. P. at 144.

Powers of agents of Foreign corporations.

(2) The power of attorney shall declare at what place in the Province the chief agency of the corporation is or is to be established, and shall expressly authorize such attorney to receive service of process in all actions and proceedings against the cor-

Contents of power of attorney.

Section  
14 (2).

poration in the Province for any liabilities incurred by the corporation therein, and also to receive from the Registry Officer all notices which the law requires to be given, or which it is thought advisable to give, and shall declare that service of process for or in respect of such liabilities, and receipt of such notices at such office or chief agency, or personally, on or by such attorney at the place where such chief agency is established, shall be legal and binding on the corporation to all intents and purposes whatsoever.

Contents of  
power of  
attorney.

The power of attorney shall declare at what place in the Province the chief agency of the corporation is or is to be established. "Chief agency" means the principal office or place of business in Ontario of an extra-Provincial corporation undertaking insurance in Ontario: section 2 (21), *supra*. The power of attorney must expressly authorize the attorney to receive service of process in all actions and proceedings against the corporation in Ontario. The power of attorney must also expressly authorize the attorney to receive notices from the Registry Officer. It must further be declared in the power that service of process or receipt of notice at the chief agency or personally on or by the attorney at the place where the chief agency is established shall be legal and binding on the corporation. For other modes of service, see section 17, *infra*. If the corporation changes its chief agent in Ontario, a similar power of attorney from the corporation to its new agent must be filed with the Registry Officer, section 16, *infra*; and a duplicate in the office of the Clerk of the Process at Toronto: section 15, *infra*. For the form of power of attorney, see Appendix B.

(8) The power of attorney duly executed shall be filed by the Registry Officer in his office. **Sections 14 (3), 15.**

The fees payable to the Provincial Treasurer on filing powers of attorney will be found in section 62, *infra*. **Filing of power of attorney. Fee .**

A duplicate of the power of attorney, duly verified as in sub-section 1 of this section, must likewise be filed in the office of the Clerk of Process: section 15, *infra*.

**15.** Duplicates, duly verified as aforesaid, of the documents mentioned in the two next preceding sections shall be filed at Toronto in the office of the Clerk of the Process; where shall also be filed thereafter, a duplicate of any power of attorney which supersedes or is intended to supersede any prior power of attorney. **Duplicate documents to be filed with Clerk of process.**

In the case of a foreign friendly society there must be filed in the office of the Clerk of the Process: (1) the statement of the financial condition and affairs of the corporation accompanying the application for initial registry: section 13, *supra*; **What documents are to be filed with Clerk of Process.**

(2) A duplicate original of the power of attorney to an agent resident in Ontario to receive service of process and notices under the Act: section 15 (1) (2), *supra*;

(3) A duplicate original of any power of attorney which supersedes or is intended to supersede any prior power of attorney. Neither the summary annual statement verified by the auditors, section 29 (1), nor the detailed annual statement, verified by the oath of the officers, section 47 (1), *infra* need be filed with the Clerk of the Process.

**Section  
16.**

Changes in  
chief agent  
or agency  
or in con-  
tracts.

**16.** Whenever the corporation changes its chief agent or chief agency in the Province, the corporation shall file with the Registry Officer a power of attorney as hereinbefore mentioned, containing any such change or changes in such respect, and containing a similar declaration as to service of process and notices as hereinbefore mentioned; and every corporation shall at the time of making the summary or annual statement hereinafter provided for, declare that, in its charter, act of incorporation, deed of settlement, or instrument of association, and in its constitution and by-laws made thereunder, no amendment or change has been made affecting its insurance contracts undertaken or to be undertaken; or if such change made, specifying clearly the change, and that no change has been made in the chief agent or chief agency without in either case such amendment or change having been duly notified to the Registry Officer.

When either the chief agent or the chief agency of the corporation in Ontario is changed the corporation must duly execute a power of attorney setting forth the change of agent or agency or both; the power of attorney must also contain a similar declaration as to service of process and notices: *vide* section 14 (2) *supra*. The corporation must file such new power of attorney with the Registry Officer; and also at Toronto in the office of the Clerk of the Process: section 15 *supra*; cf. R. S. O. 1887, c. 167, s. 33 (3), and R. S. C. c. 124, s. 14.

If the corporation is a friendly society incorporated, organized, managed and operated elsewhere than in Ontario, then, at the time of filing in the office of the Registrar the annual statement of the condition and affairs of the society required

by section 47 *infra*, the corporation must declare that in its charter, Act of incorporation, deed of settlement, or instrument of association, and in its constitution and by-laws made thereunder, no amendment or change has been made affecting its insurance contracts undertaken or to be undertaken. If, however, change has been made the declaration must clearly specify the change; and that the Registrar has been duly notified of the amendment or change. The declaration must also set forth that no change has been made in the chief agent or chief agency without the change having been duly notified to the Registrar. So also section 12 (1) *supra*, that certified copies of all amendments made from time to time to the constitution, laws, rules and regulations of the society and of Ontario branches thereof shall be filed with the Registrar: cf. R. S. C. c. 131 (*The Trade Union Act*), section 17.

Sections  
16, 17 (1).

Nothing in this Act requires corporations other than those filing an annual statement pursuant to section 47 to make such declaration. But section 12 (1) *supra*, applies to all friendly societies registered under the Act whether incorporated in the Province or incorporated elsewhere.

17. (1) After the power of attorney is filed as aforesaid, any process in any action or proceeding against the corporation for liabilities incurred in the Province, may be validly served on the corporation at its chief agency; and all proceedings may be had thereon to judgment and execution in the same manner and with the same force and effect as in the proceedings in a civil

Service of  
process  
thereafter.

**Section  
17 (1).**

action in the Province : Provided that nothing herein contained shall render invalid service in any other mode in which the corporation may be lawfully served.

Cf. C. R. 269 : "Where by any statute provision is made for service of any writ of summons, bill, petition, or other process upon any corporation, or any society or fellowship, or any body or number of persons, whether corporate or otherwise, every writ of summons may be served in the manner so provided."

**Other  
modes of  
service.**

Other modes of service are permitted under C. R. 267 : "A writ of summons against a corporation aggregate, and, in the absence of its appearance by solicitor, all papers and proceedings in the action before final judgment may be served . . . on the cashier, treasurer or secretary, clerk or agent of such corporation, or of any branch or agency thereof in Ontario; and every person who, within Ontario, transacts or carries on any of the business of, or any business for, any corporation whose chief place of business is without the limits of Ontario, shall, for the purpose of being served with a writ of summons issued against such corporation, be deemed the agent thereof." In *Watson v. Aetna Life Insurance Co.*, 8 P. R. 231, service on the local agent of the company at Ottawa was allowed although the chief agency in the Province was at Toronto.

**Substitu-  
tional  
service of  
process.**

(2) If the power of attorney becomes invalid or ineffectual from any reason, or if other service cannot be effected, the Court or a Judge may order substitutional service of any process or proceeding to be made by such publication as is deemed

requisite to be made in the premises, for at least one month in <sup>Section</sup> at least one newspaper; and such publication shall be held to 17 (2), (3). be due service upon the corporation of such process or proceeding.

Compare C. R. 253; Holmsted & Langton, 288.

(3) Where, at the passing of this Act, a friendly society <sup>Reserve funds held in Ontario.</sup> having its head office elsewhere than in Ontario has in the charge, possession, custody or power of officers or agents resident in Ontario a reserve fund or funds for the security or assistance of members of the society, such fund or funds shall be deemed to be a fund held in trust for members in the jurisdiction of the said officers or agents, and the said officers or agents shall be deemed and shall continue to be trustees of the said fund or funds until other trustees thereof resident in Ontario are appointed by competent authority; and such trust fund or funds or as much thereof as from time to time remains unexpended shall be invested as enacted in section 29 of this Act.

As a consequence of the trust impressed upon the <sup>Trust fund</sup> fund by this section, the officers in whose custody the fund is, must not allow the fund to pass into the hands of others, although officers, to the prejudice of the members in whose favour the trust is created. Again, the fund must not be diverted from the purposes for which it was originally collected, if collected for the security or assistance of members, but must be distributed among those entitled strictly according to the constitution of the fund: Lewin on Trusts, 8th edition, 344. The members are entitled to an account. The officers continue to be trustees until other trustees of the fund resident in Ontario are appointed by competent authority. The society itself under its constitution may so appoint, but in the event of failure from any reason to appoint new trustees, the court will,

Sections 17(3), 18(1) upon application, appoint. In cases within R. S. O. 1887, c. 110, s. 3, the trustees themselves, or the surviving trustee, or the executors or administrators of the last trustee may name other persons to be trustees. If in other respects the investment is reasonable and proper, the fund may be invested in any of the modes provided in section 29, *infra*.

## THE ENTRIES ON THE REGISTERS.

Recording  
registry;  
entries on  
register.

**18.** (1) On the Insurance License Register, or on the Friendly Society Register, as the case may be, the Registry Officer shall cause to be entered the name of every corporation which from time to time he shall find legally entitled to registry, together with the date of his finding; also the term for which, in the absence of suspension, revocation or cancellation, the registry is to endure; which term shall begin as from the date of the said finding and shall end not later than the 30th day of June then next ensuing, except in the case of the corporations mentioned in section 6 of this Act, and in the said excepted corporations the term of registry shall not exceed twelve months; he shall also cause to be entered the place where the head office and chief agency, if any, of the corporation are situated, and if there is a chief agency, the name and address of the chief agent; also the kind or character of insurance for which the corporation is registered; also if during the term the registry has been suspended, or revived, or revoked, or cancelled, the date and authority for such suspension, revivor, revocation, or cancellation.

The entries on the Register are: (1) The name of the corporation. It is elsewhere provided that no corporation shall be registered under a name identical with that under which any other existing corporation is registered, or so nearly resembling such name as to be likely to deceive the members or the public as to its identity, also that no registered



Section  
18 (1).

corporation shall be registered under a new or a different name except upon proof that such new or different name is authorized by law: section 23, *infra*. (2) The date of the finding of the Registry Officer that the corporation is legally entitled to registry. (3) The term for which, in the absence of suspension, revocation or cancellation, the registry is to endure. In the case of Dominion licensees, whose document of authority expires on the 31st day of March, the term is from the date of the finding not exceeding twelve months; and in the case of all other corporations the term is from the date of the finding to the next ensuing 30th June: section 20, *infra*. The Registry Officer may, by writing under his hand and seal, extend for a limited time the duration of the registry: section 21, *infra*. (4) The place where the head office and chief agency, if any, of the corporation are situated. The head office is the place where the chief executive officers of the corporation transact its business, while the chief agency is the principal place of business in Ontario of an extra-provincial corporation undertaking insurance in Ontario: section 2 (20), (21), *supra*. (5) The name and address of the chief agent, if any. (6) The kind or character of the business for which the corporation is registered. Registry for one kind of business confers upon the corporation no powers to transact another kind of business: see section 2 (6), *supra*. (7) If during the term the registry has been suspended or revived or revoked or cancelled, the date and authority for such suspension, revivor, revocation or cancellation. A certified extract from

Section  
18 (1), (2).

the register may be had (section 26 (7), *infra*), on payment of a fee of 50 cents, section 62, Division IV. *infra*. Notice of registry or of suspension, cancellation or revivor is given in the *Ontario Gazette*: section 26 (1), *infra*; and such notice, without further proof, is *prima facie* evidence of the facts set forth in the notice: section 26 (2).

Issue of  
certificates  
of registry.

(2) To all corporations registered as above, the Registry Officer shall issue under his hand and the seal of his office, a certificate of registry, or of renewed registry, as the case may be, setting forth that it has been made to appear to him that the corporation is entitled to registry as an insurance company or friendly society (as the case may be) under this Act, and that the corporation is accordingly registered for the term and for the purposes stated in the certificate.

The certificate of registry specifies the term for which such registry is to endure. The first and the last day of the term is expressed in the certificate: section 26 (6) *infra*. The purposes for which the corporation is registered is likewise stated in the certificate. Thus the certificate expresses in the case of a licensed company that the company is registered for the transaction of general life insurance, and so on according to the business for which the company is licensed; in the case of a friendly society, the certificate would express that the society is registered for undertaking the following class or classes of contracts, enumerating them. The certificate is *prima facie* evidence in any court or elsewhere of the facts alleged therein: section 26 (5) *infra*.

For the fees payable for certificates of registry, <sup>Sections 18 (2), 19 (1)</sup> see section 62, *infra*. For the forms of certificates of registry, see Appendix B.

RENEWAL OF REGISTRY.

**19.** (1) In the case of those corporations mentioned in section 6 of this Act, which receive from time to time a license or other document of authority under *The Insurance Act* of Canada, the corporation shall annually after its first registration hereunder present to the Registry Officer the then subsisting document of authority, within thirty days after the date thereof, and upon due presentation of the same and upon payment of the fee hereinafter prescribed, shall be entitled to registry hereunder, or to renewal of registry, as the case may be, and in default of registry or of renewal of registry within the said thirty days, the corporation shall be deemed to be unregistered.

Duration and renewal of registry in case of certain corporations.

In the case of corporations receiving a document of authority from the Dominion Department of Insurance, renewal of registry is had by annually producing to the Registry Officer the document of authority within thirty days of its date; and this production may be dispensed with if official notice of the issuance of such document is given by the Dominion Department to the Registry Officer. In default of registry, or of renewal of registry within thirty days as above, the corporation is deemed to be unregistered, see section 2 (6) *supra*, and is accordingly prohibited from undertaking or effecting, or offering to undertake or effect any contract of insurance within Ontario: section 27, *infra*.

Section  
19 (1), (2).  
Proviso.

Provided that such presentation may be dispensed with on the Registry Officer receiving from the proper officer of the Dominion of Canada notice that such license or document of authority has in fact issued to the corporation named in the notice and authorizes the transaction of insurance of the kind and for the term specified in the notice.

The Registry Officer may act upon the official notification of the Superintendent of Insurance for the Dominion that a license or document of authority has in fact issued to the corporation named in the notice for the transaction of insurance of the kind and for the term specified in the notice.

Suspension  
or cancell-  
ation of the  
document  
of author-  
ity under  
Insurance  
Act of  
Canada.

(2) The suspension or cancellation or non-renewal of such document of authority issued under *The Insurance Act* of Canada, shall in the respective cases operate *ipso facto* as a suspension or cancellation of registry under this Act, without notice from the Registry Officer; but registry so suspended may be revived as provided in section 6 of this Act.

So also section 49 (1) *infra*, that "The happening of any of the following events shall *ipso facto* and without notice from the Registry Officer cancel the registry of the corporation concerned:

"(c) The cancellation, or the expiry without renewal of the license or other document of authority by which the corporation was authorized to exercise its corporate powers in the transaction of insurance."

If the authorization is revived under *The Insurance Act* of Canada the Registry Officer may grant a revivor of registry and issue his certificate of the same: section 6 (3) *proviso, supra*.

Sections  
20-21.

Duration  
of registry  
in all  
other cor-  
porations.

Renewal of  
registry.

**20.** In the case of all corporations other than those in the next preceding section mentioned, any certificate of registry issued under this Act not being an interim or an extended certificate, shall, unless sooner suspended or cancelled, remain valid until the then next ensuing thirtieth day of June inclusive, when, if the corporation has filed the summary statement required by section 29, or the annual statement prescribed in section 47 as the case may be, and also properly certified copies of all amendments to its constitution, laws, rules and regulations made since the next preceding summary or annual statement, and has otherwise complied with the law, the corporation shall be entitled to a certificate of renewed registry, and so on every succeeding thirtieth day of June thereafter.

The registry of insurance licensees of the Dominion endures for the term of the license, with thirty days of grace if the license has been immediately renewed, and registry is annually renewed by presentation of the subsisting license to the Registry Officer within the said thirty days: section 19 (1) *supra*. The annual license issued to licensees of the Province expires on the 30th day of June in each year: R. S. O. 1887, c. 167, s. 57. Registry of insurance licensees of the Province under this Act is as of course, (section 5 *supra*), so also the renewal of registry follows as of course the annual renewal of the license. Corporations registered on the Friendly Society Register are, on complying with all the provisions of this Act, entitled to a certificate of renewed registry.

**21.** Upon proof that a corporation has by accident or unavoidable cause been prevented from fully complying with the provisions of this Act within the time herein prescribed, and upon payment of the fee hereinafter enacted, the Registry

Interim.  
certificate.

**Section  
21.**Extension  
of certifi-  
cate.

Officer may, by writing under his hand and the seal of his office, grant for a time limited therein an interim certificate of registry, or may by such writing extend for a limited time the duration of a subsisting certificate of registry; but in default in either case of renewal of registry before the expiry of the time so limited, the corporation shall be deemed to be unregistered.

So also as to the time within which applications for registry must be made. "On sufficient cause shown and upon payment of the fee hereinafter prescribed, the Registry Officer may, by writing under his hand and the seal of his office, extend the time for delivery of an application, or for the prosecution or completion of an application already delivered or tendered:" section 12 (2) *supra*.

"Upon proof" means upon proof to the satisfaction of the Registry Officer, section 2 (23) *supra*. For the fees payable on an *interim* certificate see the tariff in section 62 *infra*.

The *interim* certificate may itself be extended in the same manner, but in default of renewal of registry or of extension of a subsisting certificate the corporation becomes an unregistered corporation: cf. section 2 (6) *supra*.

FRIENDLY SOCIETIES NOT PERMITTED TO MAKE  
DEPOSIT.

**22.** (1) No friendly society within this Act shall be required or permitted to make any deposit whatsoever of cash or securities with the Insurance Department or other Department of the Province of Ontario; nor shall the Registrar, in any initial or renewal certificate of registration, or other publication, vouch for the financial basis, or for the actual or actuarial solvency or standing of any society; nor shall the printing of a society's annual statement in the Registrar's Report, operate, or be anywise construed as a warranty of such basis or of such solvency or standing; but a friendly society may include in its annual statement to the Registrar a valuation, made by a competent actuary and verified by his oath of any or all of the contingent liabilities of the society; and the Registrar may in his Annual Report publish an abstract of such valuation as part of the society's statement.

No deposit required or permitted in the case of friendly societies.

Registrar's Report no warranty of basis or condition.

"Actuarial solvency" means solvency of an insurance corporation when its actuarial liabilities are charged or treated as present liabilities: while "solvent," as applied to a friendly society, means a society respecting which it has been made to appear to the Registry Officer that the society has no present liabilities, apart from actuarial liabilities, or has immediately realizable assets adequate to discharge its present actual liabilities: section 2 (16) *supra*. In the case of companies licensed to transact insurance (excepting companies authorized under sections 38 and 39 of *The Insurance Act* of Canada) the actuarial solvency of the company is a condition precedent to license. Friendly societies are not inspected,

**Section  
22 (1).**

are not required to maintain a re-insurance reserve, and are not permitted or required to make deposit for the security of certificate holders. Therefore the Insurance Department assumes no responsibility for the solvency, either actual or actuarial, of a society which is admitted to registry; nor does the certificate of registry or the publication of the annual statement of a society imply that the financial basis of the society's scheme of insurance is sound: cf. *State to use of Davis v. Thomas*, 19 Ins. Law Journal, 461. The sworn statement, however, of the financial condition and affairs of the society accompanying the society's application for initial registry must show the society to be solvent, section 13, *supra*; and failure on the part of a society to pay an undisputed claim for the space of sixty days after being legally payable, or, if disputed, after final judgment and tender of a legal valid discharge, renders the society liable to have its registry suspended: section 44 (1) *infra*. The effect of such suspension is to render it unlawful for the society further to undertake insurance contracts in Ontario.

**Proviso.**

(2) The registration of a friendly society under this Act or under any amending Act shall not be deemed to authorize the society to undertake contracts of insurance elsewhere than in the Province of Ontario.

The fact of registry does not enlarge the capacity of a registered corporation to transact business elsewhere than in Ontario. But the corporation, although incorporated by virtue of an



Act of the Provincial Legislature, may enter into contracts outside the Province wherever such contracts are recognized by comity or otherwise: Sections 22 (3), 23.  
 Clarke v. Union Fire Ins. Co., 10 P. R. 313;  
 6 O. R. 223.

(3) No Friendly Society shall under penalty of becoming dis- Misrepresentation of registry.  
 entitled to registry, circulate, publish, or print any statement  
 contrary to the intent of this section; and any officer, employee  
 or agent of the society who makes use of such contrary statement  
 for the purpose of obtaining, or transacting insurance, shall be  
 guilty of an offence, and shall, upon summary conviction thereof  
 before any police magistrate or justice of the peace having juris-  
 diction where the offence was committed, be liable as for an  
 offence against section 27 of this Act, and all the provisions of  
 the said 27th section shall equally apply in the case of an offence  
 committed against this section.

The penalty enacted in section 27 is a fine not exceeding \$200 and costs, and not less than \$20 and costs, and in default of payment imprisonment with or without hard labour for a term not exceeding three months and not less than one month. On a second or any subsequent conviction the offender shall be imprisoned with hard labour for a term not exceeding twelve months and not less than three months: cf. R. S. C. c. 124, s. 39 (6).

**23.** No corporation shall be registered under a name identi- Similarity of name; new name.  
 cal with that under which any other existing corporation is  
 registered, or so nearly resembling such name as to be likely,  
 nor shall be registered under any other name likely, in the  
 opinion of the Registry Officer to deceive the members or the  
 public as to its identity; and no registered corporation shall  
 be registered under a new or a different name except upon proof  
 that such new or different name is authorized by law.

Section  
23.

Cf. *Imperial Act*, 38 & 39 Vic. c. 60, s. 11 (3); R. S. C. c. 131, *Trade Union Act*, s. 14 (3); R. S. O. 1887, c. 162, *Ontario Insurance Act*, s. 18; R. S. O. 1887, c. 157, *Letters Patent Act*, ss. 6, 10; R. S. C. c. 119, *Companies Act*, ss. 4, 6; 51 Vic. c. 26 (Ont.), *Benevolent Societies*. See *Hendriks v. Montagu*, L. R. 17 Ch. D. 839; *The Colonial Life Ass. Co. v. The Home and Colonial Ass. Co.*, 33 Beav. 548; *The London Ass. Co. v. The London and Westminster Ins. Corporation*, 9 Jur. N. S. 843; *The London and Provincial Law Ass. Society v. The London and Provincial Joint Stock Life Ass. Co.*, 17 L. J. Ch. 37 N. S.

Where two parties claim each to represent the same society, and each applies for registry in the name of the same society the Registrar may refuse to register the society under either application until the decision of a competent court determines the legal status of the applicants: *The Queen v. The Registrar of Friendly Societies*, L. R. 7 Q. B. 741. It seems to be in the discretion of the Registrar whether the name of an applicant corporation is likely to deceive the members or the public. But if registry is denied, the corporation has an appeal from the decision: section 51 (1), *infra*. The name under which the corporation is to be registered must be the corporate name and on a change in the application in order to avoid an objection taken under this section, it must appear that the new name is authorized: cf. *Morawetz on Private Corporations*, § 353.

## CHANGE OF NAME.

**24.** (1) Where an insurance corporation within the legislative authority of this Province is desirous of adopting a name different from that by which it was incorporated, or where in the opinion of the Registry Officer the name by which the corporation was incorporated may be easily confounded with that of any other existing corporation, the Lieutenant-Governor in Council, upon the recommendation of the Registry Officer, may change the name of the corporation to some other name to be set forth in the Order in Council; but no such change of name shall affect the rights or obligations of the corporation; and all proceedings which might have been continued or commenced by or against the corporation by its former name may be continued or commenced by or against the corporation by its new name.

The identity of the corporation is not affected by a change of name: *Morawetz*, § 354; nor can creditors object to a merely nominal alteration of their rights even though in form the transaction amounts to a novation by the substitution of a new debtor: *Ibid.* § 810.

Where the statute relating to the organization of fraternal benefit corporations, prohibited the adopting of a name previously in use, or so similar as to be liable to be mistaken for it, (cf. 51 Vic. c. 26, s. 1, as to proposed name of benevolent society), and authorized the insurance commissioner to issue a certificate "if it appears that the purposes and proceedings of the corporation conform to law" and made the certificate of the secretary of the commonwealth "conclusive evidence of such corporation," Held a bill cannot be

Section  
24 (1).

maintained by one corporation to restrain another corporation from using a name similar to plaintiff, as the certificate of the commissioner and secretary are conclusive as to the right to use the name. Under such an Act the insurance commissioner can not be enjoined from issuing a certificate on the ground that the name of the new corporation is so similar as to be liable to be mistaken for that of a corporation already existing, as he is the person to pass upon that question. A corporation organized under such an Act cannot prevent the use of the name by a corporation subsequently organized under the same Act on the ground that it is a trade name, after the matter has been adjudicated by the insurance commissioner: *American Order of Scottish Clans v. Merrill et al.*, (Mass. S. J. C.) 24 North Eastern Reporter (Aug. 1, 1890), p. 918.

Where words (*e.g.*, employer's liability) designate a kind of insurance business, such words do not express proprietorship and another corporation will not be restrained from using them as part of the corporate name; nor will such corporation be restrained on the ground that confusion would result as to the identity of two corporations, in that it was the custom to refer to insurance companies by abbreviated titles, since the defendant corporation would be permitted to do business only in its corporate name, which is distinguishable from that of plaintiff corporation: *Employers' Liability Assurance Corporation v. Employers' Liability Insurance Co.*, 10 N. Y. Suppl. (1890) 845.

(2) Of any such change of name, or application for change of name, such public notice shall be given in the *Ontario Gazette* and otherwise as the Registry Officer shall direct.

Sections  
24 (2)-(3),  
25 (1).

Public  
notice.

(3) Section 20 of *The Ontario Insurance Act* is hereby repealed; and sections 22 and 23 of the said Act are amended by striking therefrom the words "of name or" wherever they occur; also sub-section 1 of section 19 of *The Act respecting Benevolent, Provident and other Societies* is amended by inserting after "society," in the first line thereof, the words "not being an insurance corporation within the meaning of the *Insurance Corporations Act, 1892*."

Rev. Stat.  
c. 167, s. 20  
repealed;  
ss. 22 and  
23 amended  
c. 172, s. 19  
(1) amend-  
ed.

Sub-section (1) of this section replaces the similar provision contained in section 20 of *The Ontario Insurance Act*; and in the case of societies which are incorporated under *The Benevolent Societies Act* but are within the scope of this Act, the power to change the name or the declared purposes of the society is withdrawn from the county judge or stipendiary magistrate.

#### REVOCATION OF REGISTRY.

**25.** (1) Upon proof that any registry or certificate of registry has been obtained by fraud or mistake, or that a corporation exists for an illegal purpose, or has, in terms of section 44, made default of payment, or has wilfully, and after notice from the Registry Officer, contravened any of the provisions of this Act, or has ceased to exist, the registry of the corporation may be suspended or cancelled by the Registry Officer; but such suspension or cancellation shall be appealable as hereinafter provided.

Suspension or  
cancellation of  
registry.

See page 576.

Cf. 38 & 39 Vic. c. 60 (Imp.), s. 12 (1).

On suspension or cancellation of its registry the corporation becomes an unregistered corporation and may not further undertake or offer to undertake contracts of insurance in Ontario, but

Section  
25 (1)-(2).

the treasurer or other officer having control of the insurance fund is *ipso facto* by the suspension or cancellation made interim receiver and the business of the corporation is at an end: section 53 (1), *infra*. The decision of the Registry Officer is rendered in writing, section 50 (1) *infra*; and a copy of such decision under the seal of his office is sent or delivered to the head office or chief agency of the corporation in the Province: *Ibid*. A like provision for notice of suspension or cancellation of registry is contained in the sub-section following. Appeals are governed by section 51 (*vide infra*). For the events, the happening of which cancel or suspend registry *ipso facto*, see section 4 (1) and (2), *infra*, and also sections 5 (2) and 6 (3) *supra*.

Notice of  
suspension  
or cancell-  
ation of  
registry to  
corporation.

(2) On the suspension or cancellation of the registry of any corporation, except as herein otherwise enacted, the Registry Officer shall, by registered post or otherwise, cause notice thereof in writing under his hand to be delivered to the head office or chief agency of the corporation in Ontario; and from the date of such delivery the corporation shall be deemed to be unregistered, but, in the case of suspension of registry, only whilst such suspension lasts; and from and after such delivery the corporation shall withdraw every offer to undertake contracts, and shall absolutely cease to undertake contracts, but without prejudice to any liability actually incurred by such corporation which may be enforced against the same as if such suspension or cancellation had not taken place.

Effect of  
notice  
delivered.

Cf. 38 & 39 Vic., c. 60 (Imp.) s. 12 (5); *Ontario Insurance Act*, ss. 61, 142.

Where registry is suspended or cancelled, *ipso facto*, by the happening of one of certain events,

specified in sections 5 (2), 6 (3), 49 (1) and (2), no notice is required to be delivered to the corporation affected. Delivery of notice may be by registered post or otherwise: section 50, *infra*. On suspension or cancellation of registry the corporation must cease to undertake contracts, and further must withdraw all offers to undertake contracts. Any setting up of a sign or inscription containing the name of the corporation, or any distribution or publication of any proposal, circular, card, advertisement, printed form, or like document in the name of the corporation, or any written or oral solicitation in the corporation's behalf, and any collecting or taking of premiums of insurance, amounts to offering to undertake contracts: section 2 (4), *supra*. The penal clause (section 27, *infra*) applies to any undertaking of contracts or offering to undertake contracts on behalf of a corporation whose registry is suspended or cancelled.

# OFFICIAL NOTICES AND CERTIFICATES.

**26.** (1) The Registry Officer shall cause to be published in the *Ontario Gazette*, in February and July of each year, respectively, a list of the corporations which stand registered at the date of the list; also, if, in the interval between two such lists of registered corporations, a new corporation is registered, or the registry of any corporation is suspended or cancelled, or if a suspended registry is revived, he shall cause notice thereof to be published in the *Ontario Gazette*.

Evidence of registry; semi-annual list to be published.

Compare R. S. O. 1887, c. 167 (*Ontario Insurance Act*), s. 62; R. S. C. c. 124 (*The Insurance Act*), s. 18. For the effect of the list or a notice in the *Ontario Gazette*, see the next sub-section.

**Section  
26 (2)-(4).**Effect of  
notice in  
Gazette.

(2) A list or notice published in the *Ontario Gazette* over the name of the Registry Officer shall, without further proof, be received in any court and before all justices of the peace and others as *prima facie* evidence of the facts set forth in such published list or notice.

Gazette  
as evidence

The list or notice in the *Gazette* is made *prima facie* evidence of the facts set forth in the list or notice. As the list purports to be a list of the corporations which stand registered at the date of the list (sub-section (1) of this section *supra*), the production of the *Gazette* containing the list to the magistrate before whom a complaint under section 27 is tried, will in the absence of rebutting evidence be conclusive that the corporation in question was or was not registered on the day named. The entire *Gazette* must be produced; a cutting from it will not suffice: *R. v. Lowe*, 15 Cox 286.

Official  
publica-  
tions to be  
evidence.

(3) All copies of returns, reports or other official publications of the Registry Officer purporting to be printed by the Printer to the Crown, or the Printer to the Legislative Assembly, or to be printed by order of the Legislative Assembly, shall, without further proof, be admitted as evidence of such publication and printing and as true copies of the original documents so printed and published.

Compare 36 & 37 Vic. c. 66 (Imp.), s. 3; 19 & 20 Vic. c. 79 (Imp.), s. 174; also, R. S. O. 1887, c. 61 (*The Evidence Act*), s. 22; R. S. O. 1887, c. 1 (*Interpretation Act*), s. 8 (37).

Registry  
Officer's  
seal or  
signature.

(4) The seal or signature of the Registry Officer shall be admissible in evidence without proof of its authenticity; or of the official character of the person signing.

Compare 19 & 20 Vic. c. 79 (Imp.), s. 174; 38 & 39 Vic. c. 60 (Imp.), s. 39.



(5) A certificate under the hand of the Registry Officer and the seal of his office, that on a stated day the corporation or person mentioned therein stood registered or did not stand registered within the meaning of this Act, or that the registry of any corporation or person was originally granted, or was renewed, or was suspended, or was revived, or was revoked, or was cancelled on a stated day, shall be *prima facie* evidence in any court or elsewhere of the facts alleged in the certificate.

Section  
26 (5)-(6).

Certificate  
as to facts.

In the case of a corporation the certificate will state that on the day named in the certificate the corporation stood or did not stand registered on the Insurance License Register or on the Friendly Society Register, as the case may be. Regarding a person, the certificate will state that on the day named the person was or was not registered on the Insurance Agents' Register; or was or was not the registered attorney of a foreign corporation. The seal or signature of the Registry Officer is admissible in evidence without proof of its authenticity or of the official character of the person signing: sub-section 4 of this section, *supra*.

(6) Every certificate of registry granted under this Act shall specify the first day, and also the last day, of the term for which the corporation or person is registered; and the corporation or person so registered shall be deemed to be registered from the commencement of the first day to the end of the last day so specified.

Commencement and end of certificate.

The registry endures from the commencement of the first day specified in the certificate to the end of the last day as specified. On the expiration of the term of registry without renewal the corporation or person is deemed to be unregistered: section 2 (6) *supra*. In addition to the term for

Section  
26 (6)-(7).

which registry is granted the certificate of registry states, in the case of a corporation, the purposes for which it is registered: section 18 (2) *supra*. Thus in the case of a licensed company the certificate would express that the company is registered for the transaction of general life insurance business, and so on, according to the business for which the company was licensed: in the case of a friendly society, the certificate would express that the society is registered for undertaking the following class or classes of contracts (enumerating them).

Copies or  
extracts  
from office  
documents

(7) Copies of or extracts from any book, record, instrument or document in the office of the Registry Officer certified by him to be true copies or extracts and sealed with the seal of his office, shall be *prima facie* evidence of the same legal effect as the original in any court or elsewhere.

Compare 38 & 39 Vic. c. 60 (Imp.), s. 39; see also R. S. O. 1887, c. 61 (*The Evidence Act*), ss. 23, 24. To the same effect is *The Ontario Insurance Act*: "A copy of any document in the office of the Inspector, certified by him to be a true copy and sealed with the seal of his office, shall be held to be authentic, and shall be *prima facie* evidence of the same legal effect as the original in any court or elsewhere": R. S. O. 1887, c. 167, s. 150. The fees payable for copies of documents on file in the office of the Registry Officer are:—For office copy of decision of Registry Officer, \$1.00; for certified copy of entry on register, 50c; for copies of or extracts from documents filed with the Registry Officer, per folio of 100 words, 10c: section 62 Division IV. *infra*.

Fees on  
copies or  
extracts.

In a Maryland case, Metropolitan Life Ins. Co. v. Dempsey, 20 Ins. L. J. 547, a book found in the Insurance Commissioner's office containing a document which purported to be a copy of the charter and by-laws of a company was held sufficient evidence, under the law of Maryland, that the company was a body corporate; it appearing that it was carrying on business in Baltimore under the corporate name; that it received applications and issued policies according to established forms; that it had a home office in New York city and an agency in Baltimore; that it had a president, secretary, and other officials, and that its policies contained stipulations in reference to suits to be brought against it.

Sections  
26 (7)-(8),  
27 (1).

Evidence  
of incorpor-  
ation of  
extra-pro-  
vincial  
company.

(8) For purposes of this section Registry Officer shall include the Deputy or Assistant Registry Officer.

Interpre-  
tation.

Compare 38 & 39 Vic. c. 60 (Imp.) s. 39; 39 & 40 Vic. c. 45 (Imp.), s. 24; R. S. O. 1887, c. 167 (*Ontario Insurance Act*), 140 (1); and, also, R. S. O. 1887, c. 1 (*The Interpretation Act*), s. 8 (22).

# UNAUTHORIZED INSURANCE, PENALTIES.

27. (1) After the 31st day of December, 1892, no person or persons, or body corporate or unincorporated, other than a corporation standing registered under this Act and persons duly authorized by such registered corporation to act in its behalf, shall undertake or effect, or offer to undertake or effect, any contract of insurance.

No unreg-  
istered  
corpora-  
tion to  
undertake  
insurance.

To the like effect is section 3, *supra*:—"After the 31st day of December, 1892, no insurance

**Section  
27 (1).**

other than as enacted by and for the purposes of *The Land Titles Act* shall be transacted or undertaken in Ontario except by a corporation duly registered as herein provided."

What corporation includes.

Only corporations may register; individual underwriters or unincorporated associations have no status under the Act to transact insurance. "Corporation," however, includes, (a) every licensee licensed under or by virtue of *The Insurance Act* of Canada, section 6 (2) *supra*, and (b) societies duly registered under *The Friendly Societies Act, 1875*, or any Act consolidated thereby, or any amending Act thereto, passed by the Parliament of the United Kingdom: section 10 (1) proviso, *supra*. Only corporations standing registered on the Provincial register may undertake or offer to undertake any contract of insurance. "Contract" of insurance has the extended meaning of any contract within sub-section 12 of section 2, *supra*. Only persons duly authorized by such registered corporations to act in its behalf may undertake or effect contracts of insurance. Thus in transacting life insurance by licensed companies a double authorization is needed:—The corporation must be registered for the purpose of undertaking contracts of life insurance: cf. section 3, *supra*; and the agent taking the application must be authorized by registration on the Insurance Agents' Register: section 39 (12) *infra*.

Transaction of insurance.

Offering to undertake contracts.

"In the case of any insurance corporation whatsoever, any setting up of a sign or inscription containing the name of the corporation, or any distribution or publication of any proposal, circular,

card, advertisement, printed form or like document in the name of the corporation, or any written or oral solicitation in the corporation's behalf, or any collecting or taking of insurance or premiums of insurance shall be deemed 'offering to undertake contracts' within the intent of this Act:" section 2 (4) *supra*.

Section  
27 (1)-(2).

(2) If any promoter, organizer, office-bearer, manager, director, officer, collector, agent, employee, or person whatsoever other than as enacted in the next preceding sub-section, undertakes or effects, or agrees or offers to undertake or effect any contract of insurance, he shall be guilty of an offence, and upon summary conviction thereof before any police magistrate or justice of the peace having jurisdiction where the offence was committed, shall be liable to a penalty not exceeding \$200 and costs, and not less than \$20 and costs, and in default of payment the offender shall be imprisoned with or without hard labour for a term not exceeding three months and not less than one month; and on a second or any subsequent conviction he shall be imprisoned with hard labour for a term not exceeding twelve months and not less than three months.

Penalty.

Compare R. S. C. c. 124, *The Insurance Act*, s. 22 (1); R. S. O. 1887, c. 167, *The Ontario Insurance Act*, section 55 repealed by sub-section 7 of this section; also, section 60 of this Act, *infra*.

Any person whatsoever who undertakes or offers to undertake any contract of insurance, except he be duly authorized by some registered corporation to act in its behalf, is guilty of an offence. The burden of proving that the corporation in whose behalf he is soliciting is registered is upon the person charged: sub-section 5 of this section. "Offering to undertake any contract of

Member-  
ship fee a  
premium.

Section  
27 (2).

insurance" has the extended meaning given to the phrase by section 2 (4) *supra*, and includes the collecting or taking of any premium. The joining or membership fee of The International Fraternal Alliance was held to be a premium: *Reg. v. Stapleton*, H. C. J., C. P. D. 10th Feb., 1892. "Contract of insurance" means and includes any contract within the intent of sub-section 12 of section 2, *supra*.

Remission  
of penalty.

It is within the jurisdiction of the Province to impose punishment by fine, penalty or imprisonment for enforcing any law of the Province made in relation to any matter coming within any of the classes of subjects over which the Province has exclusive jurisdiction: *The British North American Act*, 1867, s. 92 (15); *Hodge v. Reg.* L. R. 9 App. Cas. 133. The Lieutenant-Governor in Council may remit the pecuniary penalties imposed by this section, R. S. O. 1887, c. 90, s. 3, but not the costs incurred up to the time of remitting the penalty: *ibid.* s. 4. A police magistrate or justice of the peace is not authorized to remit any penalty: *ibid.* s. 2. By 51 Vic. c. 5 (Ont.) power to commute and remit sentences for offences against the laws of the Province, or offences over which the legislative authority of the Province extends, was declared to be vested in and exercisable by the Lieutenant-Governor or Administrator for the time being of the Province. The constitutionality of the Act was upheld in *Attorney-General of Canada v. Attorney-General of Ontario*: 20 O. R. 222 (in appeal).

On conviction for a first offence, the offender is liable to a fine, and in default of payment of the fine to imprisonment with or without hard labour. On conviction of a second or third offence the penalty is imprisonment with hard labour, and without the alternative of a fine. Information must be laid within one year after the commission of the alleged offence: sub-section 6 of this section.

Section  
27 (2)-(4).

In a Tennessee case (*Morton v. Hart*, 19 Ins. L. J. 347) the plaintiff had applied to the agents for insurance on a stock of goods, directing them to return his money if they could not give him a good policy. They sent a policy in a company which had not complied with the State laws, and which proved to be insolvent. The agents were held liable to the assured for the loss, inasmuch as they must be held to have guaranteed the solvency of the company to the extent of the capital required by the statute of the state and that losses would be paid.

Liability of  
agent to  
assured.

(3) Any one may be prosecutor or complainant under this Act; and one-half of any fine imposed by virtue of this Act shall, when received, belong to Her Majesty for the use of the Province, and the other half shall belong to the prosecutor or complainant.

Applica-  
tion of fine.

Compare R. S. C. c. 124 (*The Insurance Act*), s. 22 (2).

(4) Any person convicted under this Act who gives notice of appeal against the decision of the convicting justice shall be required before being released from custody to give to the justice satisfactory security for the amount of the penalty, costs of conviction, and appeal.

Security  
for costs.



Section  
27 (4)-(7).  
Costs.

By *The Interpretation Act*, R. S. O. 1887, c. 1, s. (8) 20, "The word 'sureties' shall mean sufficient sureties, and where these words are used, one person shall be sufficient therefor unless otherwise expressly required." In *Regina v. Wright*, 14 O. R. 668, on a conviction under R. S. O. 1887, c. 142, ss. 40 and 46, it was held that a Justice of the Peace had no jurisdiction, on default by the defendant of payment of fine and costs, to direct his confinement for the space of one month, unless, in addition to the payment of the fine and costs, he paid the charge of conveying him to jail.

Burden of  
proof.

(5) In any trial or cause, or proceeding under this Act the burden of proving registry, shall be upon the corporation or person charged.

Compare R. S. O. 1887, c. 148, s. 53. The method of proving registry is by production of a certificate of registry under the hand and seal of office of the Registry Officer: section 26 (5) *supra*.

Limita-  
tion of  
prosecu-  
tions.

(6) All informations or complaints for the prosecution of offences under this Act shall be laid or made in writing within one year after the commission of the offence.

Compare R. S. C. c. 124 (*The Insurance Act*), s. 23; R. S. O. 1887, c. 60, s. 1.

Rev. Stat.  
c. 167, ss. 55,  
56, repea-  
led: s. 5 (2),  
amended.

(7) Sections 55 and 56 of *The Ontario Insurance Act* are hereby repealed; also sub-section 2 of section 3 of the said chapter is amended by striking out all the words after the word "apply" in the first line thereof and substituting the words following: "To any corporation standing registered on the Friendly Society Register, pursuant to *The Insurance Corporations Act, 1892*."



## Unauthorized Insurance, Penalties.

Section 55 of *The Ontario Insurance Act*, R. S. O. 1887, c. 167, is replaced by sub-section 1 of this section (*supra*).

Section 56 of *The Ontario Insurance Act* enacted a penalty if "Any director, officer, agent, employee, or other person in contravention of section 55 undertakes or effects, or agrees or offers to undertake or effect, or solicits, any contract, or collects any premium in behalf of any company, without the company being licensed under this Act \* \* " It was provided that the penalty might be sued for and recovered on information filed in the name of the Attorney-General of Ontario. The simpler procedure of information or complaint, and summary trial before a magistrate or a Justice of the Peace has been substituted in the penal section of this Act: see sub-section 2 of this section, *supra*. Similar prohibition of and penalties against unauthorized insurance are contained in *The Insurance Act* of Canada section 22, which is as follows:—"Every person who delivers any policy of insurance, or interim receipt, or who collects any premium (except only on policies of insurance issued to persons not resident in Canada at the time of issue), or carries on any business of insurance on behalf of any life, fire or inland marine insurance company, without such license as aforesaid, shall, on summary conviction thereof, before any two Justices of the Peace, for a first offence, incur a penalty not exceeding fifty dollars and costs, and not less than twenty dollars and costs; and in default of pay-

Repeal of penalty clause in Ont. Ins. Act.

The Insurance Act of Canada, s. 22.

**Section  
27 (7).**

ment the offender shall be liable to imprisonment with or without hard labour for a term not exceeding three months and not less than one month; and for a second or any subsequent offence such offender shall be imprisoned with hard labour for a term not exceeding six months and not less than three months;

“(2) One-half of any such penalty, when recovered, shall belong to Her Majesty, and the other half thereof to the informer.”

Existing  
proceed-  
ings are  
not affected  
by repeal.

Existing proceedings under *The Ontario Insurance Act* are not affected by the repealing clause. For “no offence committed, and no penalty or forfeiture incurred, and no proceeding pending under any Act at any time repealed, shall be affected by the repeal, except that the proceedings shall be conformable where necessary, to the repealing Act, and that where any penalty, forfeiture or punishment has been mitigated by any of the provisions of the repealing Act, such provisions shall be extended and applied to any judgment to be pronounced after such repeal”: R. S. O. 1887, c. 1, (*The Interpretation Act*) s. 8 (44).

*Ontario  
Insurance  
Act, s. 3(2)  
amended.*

Sub-section 2 of section 3 of *The Ontario Insurance Act* now reads:—“The provisions of this Act shall not apply—(1) To a company licensed by the Dominion of Canada, except as to sections 114 to 120 inclusive, which shall apply to all fire insurance companies transacting business in Ontario.

“(2) This Act shall not apply to any friendly society within the intent of the *Insurance Corporations Act, 1892.*”

Sub-section 2 before the amending clause was <sup>Sections 27 (7), 28 (1)</sup> as follows:—"This Act shall not apply to any benevolent, provident, industrial, or co-operative society not requiring a license for any such contract as aforesaid before the passing of this Act.

# THE BOOKS OF ACCOUNT AND AUDIT.

**28.** (1) Every registered corporation except the corporations mentioned in section 6 hereof, shall keep such a classification of its contracts, and such register and books of account as may from time to time be directed or authorized by the Registry Officer; and if it appears at any time to the Registry Officer that such books are not kept in such business-like way as to make at any time a proper showing of the affairs and standing of the corporation, he shall thereupon nominate a competent accountant to proceed, under his directions, to audit such books and to give such instructions as will enable the officers of the corporation to keep them correctly thereafter; the expense of the accountant shall be borne by the corporation to which he is sent, and shall not exceed \$5 per day and necessary travelling expenses; and the account for such audit and instructions shall, when approved under the hand of the Registry Officer, be payable by the corporation forthwith.

Corporation to keep such books as may be directed by Registry Officer.

Ratification of disordered books.

Compare 44 Vic. c. 20 (Ont.), s. 21; 43 Vic. c. 20 (Ont.); s. 1; 43 Vic. c. 25 (Ont.), s. 5, *part*.

Insurance corporations receiving a license, or document of authority, under *The Insurance Act* of Canada, section 6, *supra*, make their returns to and are under the supervision of the Dominion Department of Insurance. Such corporations are, therefore, exempted from the effect of this section.

In the case of corporations which are not organized exclusively for purposes of insurance,

Sections  
28 (1)-(2),  
29 (1).

"Society" means only that branch or department or division of the corporation which has such contracts in charge: section 2 (4) (a) *supra*; and it is provided that there shall be kept distinct and separate funds, books, accounts and vouchers, for purposes of such contracts: *ibid*. It is only the books and accounts of this distinct and separate fund that are within the meaning of this section.

Condition  
of books.

In one American case it was held to be sufficient grounds for dissolving an association that the books containing the accounts of the receipts and expenditures were so confused and unsystematic as to make it almost impossible even by the aid of experts to derive therefrom any certain information as to the affairs of the association: *Chicago Mutual Life Indemnity Association v. Hunt, Attorney-General*, (Ill. S. C., March, 1889), 20 North East. Rep. 55.

Rev. Stat.  
c. 167, s. 100  
repealed.

(2) Section 100 of *The Ontario Insurance Act* is hereby repealed.

Section 100 of *The Ontario Insurance Act* enacted a similar clause with reference to all companies within the intent of that Act. The present section is general and applicable to all registered insurance corporations excepting only Dominion licensees.

Annual  
audit of  
societies'  
books.

29. (1) It shall be the duty of the officers of every registered friendly society to have at least once in every year a *bona fide* and business-like audit made of its books of record and account, by at least two competent auditors, who shall not be officers of the society; and to furnish to each member annually a summary

statement, showing as the result of such audit or audits, the society's actual assets, liabilities, receipts and expenditures, and the state of the insurance fund or funds, and a copy of such summary statement, signed and certified by the auditors, shall be filed in the office of the Registrar, on or before the first day of March in each year.

Section  
29 (1).

Compare 38 & 39 Vic. c. 60 (Imp.), s. 14, ss. 1, (c), (d), (h), 30 (8); 39 & 40 Vic. c. 45 (Imp.), s. 10 (c); R. S. C. c. 131 (*Trade Union Act*), Schedule 5, 6.

"The duties of an auditor to a life assurance company," as stated by Mr. Morgan in his work on *Auditors of Accounts* (3rd ed. p. 20), "are; to examine whether the current premiums have been duly paid; to require the production of the receipts for those unpaid; to ascertain that the moneys received have been paid into the bankers; that all payments made for policies surrendered to the office, and for other disbursements authorized by the Board, have been duly vouched for; likewise, whether the policies which have become claims have been paid; whether those paid or surrendered have been given up and cancelled, and endorsed with the usual discharge; whether the mortgages and other securities are in due order; and whether the balance sheet is a true and faithful account of the condition of the company."

Duty of  
auditor.

The duty of an auditor was discussed in *Leeds Estate Co. v. Shepherd*, L. R. 36 Ch. D. 737, and it was laid down that: It is the duty of the auditor not to confine himself to verifying the arithmetical summary of the balance sheet, but to

**Section  
29 (1).**

inquire into its substantial accuracy, and to ascertain that it contains the particulars specified in the articles, and is properly drawn up, so as to contain a true and correct representation of the company's affairs; and he may be made liable for damages to the company, if, in consequence of any default on his part in these respects, improper payments are made by the directors by way of dividends or otherwise.

The auditors under the Act are not to be officers of the society; the funds included in this audit are insurance funds only. For society in the case of corporations, whose insurance contracts are in charge of a branch or department thereof has the restricted meaning of such branch or department, section 2 (4) a, *supra*. A summary statement must be prepared showing as the result of the audit, the society's actual assets, liabilities, receipts and expenditures, and the state of the insurance fund or funds. A copy of such summary statement, signed and certified by the auditors must be filed with the Registrar on or before the first day of March in each year. A copy of the summary statement must be forwarded to each member annually, but sending at least twenty-five copies of the statement to each lodge or local branch for the information and use of the members thereof is a sufficient compliance with this provision (see the proviso following). The audit is not binding on the members, *Bloxam v. Metropolitan Rail. Co.*, 3 L. R. 3 Ch. 337, and a special audit, by an auditor appointed by the Registrar,

may be had at the instance of twenty-five members: section 30 (1) *infra*.

Section  
29 (1).

A default of a society is the default of its officers, for, "every offence committed by a corporation or by the insurance branch of a corporation against this Act, shall be deemed to have also been committed by every officer of the same, bound by virtue of his office or otherwise to fulfil any duty whereof such offence is a breach, or if there be no such officer, then by every member of the committee of management of the same, unless such member be proved to have been ignorant of his duty or have attempted to prevent the commission of such offence; and every default under this Act constituting an offence constitutes, if continued, a new offence in every week in which the default continues: section 60, *infra*.

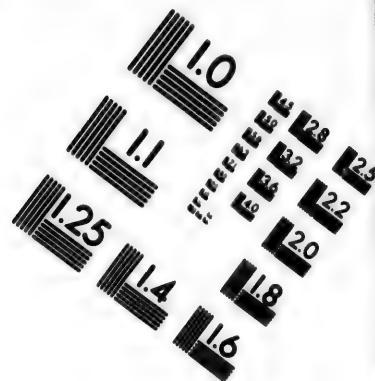
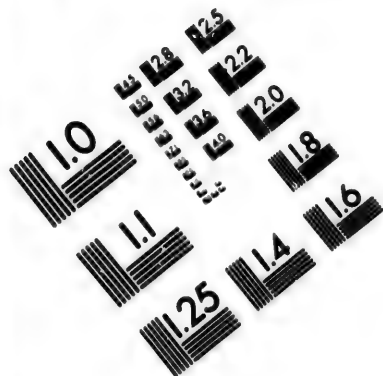
Default of  
the society  
the default  
of the  
officers.

When a society by its officer, employee or agent having, in his custody, possession or power, the funds, books or vouchers of the society, refuses to have the same duly audited as provided in this section, or obstructs an auditor in the performance of his duties, the Registrar, upon proof of the fact, may suspend or cancel the registry of the society, section 30 (6) *infra*; and an officer of the society refusing or neglecting to exhibit the books to the auditors and allow the same to be inspected or audited and extracts to be taken therefrom is guilty of an offence punishable on summary conviction by imprisonment without the option of a fine: section 30 (5) *infra*.

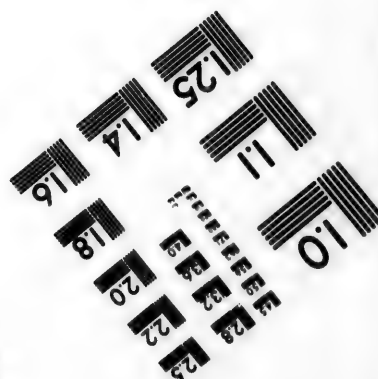
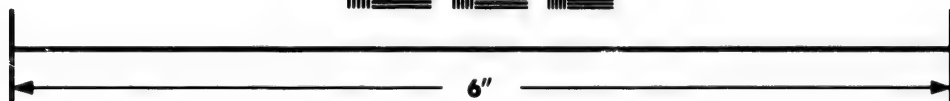
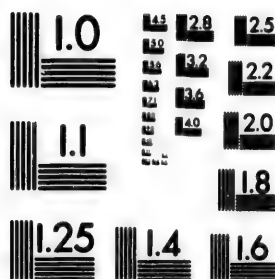
Society on  
default of  
audit  
suspended.







# IMAGE EVALUATION TEST TARGET (MT-3)



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(716) 872-4503**



**Section**  
**29 (1)-(2).**  
**Proviso.**

Provided that the society, instead of furnishing such summary statement to each member individually may deliver to each lodge or local branch for the information and use of the members thereof, at least twenty-five copies of the summary statement; of which at least one copy shall be kept posted up in a place accessible and convenient to the members generally, there to remain posted until at least one month after the posting of the next succeeding statement; also one copy of the said summary statement shall be kept on record and shall be made accessible to the members generally.

Compare as to Joint Stock Companies, R. S. O. 1887, c. 157, s. 57 (6).

**Permissi-**  
**ble invest-**  
**ments.**

(2) The surplus insurance funds of a society or branch within the intent of section 8 shall in the name of the society or branch be invested in securities which are a first charge on land held in fee simple, or in registered debentures of societies authorized by sections 4 and 5 of an Act passed in the 54th year of Her Majesty and chaptered 19; or in debentures of a municipality of Ontario, such securities or debentures being in other respects reasonable or proper; or in securities of the Dominion of Canada, or of the Province of Ontario; or shall remain deposited at interest in the name of the society in any chartered bank of Ontario or in any building society or loan company in Ontario by any Act of Ontario or of the Dominion of Canada duly authorized to receive deposits.

Compare R. S. O. 1887, c. 167 (*The Ontario Insurance Act*), s. 130.

**54 Vic. c. 19,**  
**s. 4.**  
**Invest-**  
**ment of**  
**trust funds**

The text of 54 Vic. c. 19, ss. 4, 5, is as follows:—"It shall be lawful for a trustee, unless expressly forbidden by the instrument (if any) creating the trust, to invest any trust funds in his hands in terminable debentures or debenture stock of the hereinafter mentioned societies and com-

Section  
29 (2).

panies, provided that such investment is in other respects reasonable and proper, and that the debentures are registered, and are transferable only on the books of the society or company in his name as the trustee for the particular trust estate for which they are held in such debentures or debenture stock as aforesaid:

“(a) Of any incorporated society or company which has been, or shall hereafter be authorized, by any lawful authority to lend money upon mortgages on real estate, or for that purpose and other purposes, such society or company having a capitalized, fixed, paid-up and permanent stock not liable to be withdrawn therefrom, amounting to at least \$500,000, and having a reserve fund amounting to not less than 25 per cent. of its paid-up capital, and its stock having a market value of not less than 25 per cent. premium, and the society or company having during each of the ten years next preceding the date of investment, paid a dividend of not less than six per centum on its ordinary stock;

“(b) Or of any society or company heretofore incorporated, under chapter 164 of the Revised Statutes of Ontario, 1877, or any Act incorporated therewith, or under chapter 169 of the Revised Statutes of Ontario, 1887, having a capitalized, fixed, paid-up and permanent stock not liable to be withdrawn therefrom amounting to at least \$100,000, and having a reserve fund amounting to not less than 15 per cent. of its paid-up capital, and its stock having a market value of not less

**Section  
29 (2).**

than 7 per cent. premium, and the society or company having during each of the ten years next preceding the date of investment paid a dividend of not less than 6 per cent. on its ordinary stock; provided that nothing in this sub-section (b) shall in any way affect any investment, made under authority of said Act before the passing of this Act.

“(c) The trustees may from time to time vary any such investment.

Rev. Stat.  
c. 110, s. 30,  
repealed.

“(d) The 30th section of the *Act respecting Trustees and Executors and the Administration of Estates* is repealed.

s. 5.

Companies  
in which  
funds  
invested to  
be approv-  
ed by  
Lieuten-  
ant-Gov.  
ernor.

“5. Provided that no investments shall be made under authority of this Act in the debentures of any society or company of the class first hereinbefore mentioned, which has not obtained an order of the Governor in Council approving of investments in the debentures thereof; and such approval is not to be granted to any society or company which does not appear to have kept strictly within its legal powers in relation to borrowing and investment.”

Registered  
debentures.

The provisions relating to the registration of debentures are contained in *The Debentures Registration Act*, R. S. O. 1887, c. 186. .

Deposits  
with  
building  
societies

The surplus insurance funds of a friendly society may remain deposited at interest in the name of the society in any chartered bank in Ontario, or in any building society or loan company in Ontario, by any Act of Ontario or of the Dominion of Canada duly authorized to receive deposits.

Section 56 (3) of *The Building Societies Act*, Section 29 (2).  
 R. S. O. 1887, c. 169, enacts that "no society established after the 31st day of December, 1877," R. S. O. 1887, c. 169, s. 56 (3).  
 shall borrow money or receive deposits, until not less than \$100,000 of stock has been subscribed, and not less than \$40,000 has been actually paid thereon."

The Ontario statute in force respecting loan companies receiving money on deposit, is 54 Vic. 54 Vic. c. 38.  
 c. 38, ss. 12 and 13:—

"12. The company shall not, without the express consent of the shareholders, given at a general meeting, receive money on deposit; and when money is received on deposit, the same shall, for the purposes of this Act, be deemed to be money borrowed by the company.

"13 (1) The company shall not borrow money unless at least \$100,000 of its subscribed capital stock has been paid up.

"(2) The company shall not borrow money unless at least twenty per cent. of its subscribed capital stock has been paid up.

"(3) If the company borrows money by way of deposit, under the next preceding section, the aggregate amount of the sums so borrowed, by way of deposit, shall not at any time, whether the company borrows solely by way of deposit or also in other ways, exceed the aggregate amount of its paid-up capital, and of its other cash actually in hand or deposited by it in any chartered bank or banks in Canada.

Sections  
23 (2) 30 (1).

"(5) If the company borrows money both by way of debentures or other securities, or by guarantee, as aforesaid, and also by way of deposit, the aggregate amount of money so borrowed shall not, at any time, exceed the amount of the principal moneys remaining unpaid on securities then held by the company, nor shall it exceed double the amount of the then actually paid-up and unimpaired capital of the company; but the amount of cash then actually in the hands of the company, or deposited by it in any chartered bank, or both, shall be deducted from the aggregate amount of the liabilities which the company has then incurred, as above mentioned, in calculating aggregate amount for the purposes of this sub-section."

The following Statutes of the Parliament of Canada relate to building societies receiving money on deposit: 37 Vic. c. 50; 40 Vic. c. 49; 42 Vic. c. 49; 47 Vic. c. 40.

Special  
audit in  
case of  
fraud,  
illegal acts,  
or default  
of audit.

**30.** (1) If it is established to the satisfaction of the Registrar that the accounts of any registered society have been materially and wilfully falsified, or that for eighteen consecutive months there has been no *bona fide* audit of the books and accounts; or if there is filed in the office of the Registrar a requisition for audit bearing the signatures, addresses and occupations of at least twenty-five persons being members of the society, or claimants, or persons entitled to claim, or having insurable interest under contracts of the society, and such requisition alleges in a sufficiently particular manner to the satisfaction of the Registrar, specific fraudulent or illegal acts, or repudiation of contracts, or insolvency, the Registrar may nominate a competent accountant, who shall, under the directions of the Registrar, make a special audit of the society's books and accounts and report thereupon to the Registrar, in writing, verified upon oath.

Compare R. S. O. 1887, c. 167 (*The Ontario Insurance Act*), ss. 100, 146; 38-39 Vic. c. 60 (Imp.), ss. 14 (1c), 35. Section 30 (1).

If the requisition for audit alleges the society <sup>Insolvency</sup> to be insolvent, the solvency of the society within the limited meaning of the Act, is alone inquired into. A society is solvent that has no present liabilities apart from actuarial liabilities, or has immediately realizable assets adequate to discharge its present actual liabilities: section 2 (16) *supra*. Section 42, *infra*, enacts that every claim under an insurance contract accruing to a member of a friendly society, or to his executors, administrators or assigns, shall become legally payable on the expiration of sixty days after reasonably sufficient proof has been furnished to the society of the happening of the event on which such claim was, by such contract, to accrue. But the society may pay the claim at any time before the expiration of the sixty days. The society is liable to have its <sup>Claims when payable.</sup> registry suspended upon failure of the corporation to pay an undisputed claim on an insurance contract for the space of sixty days after being legally payable, or if disputed, after final judgment and tender of a legal valid discharge. The making of false entries in the books of the society, or the refusal to allow the books to be audited and extracts to be made therefrom, is an offence upon the part of the officer so acting, and punishable on summary conviction by imprisonment without the option of a fine: sub-section 5 of this section. Registry suspended for insolvency.



**Section  
30 (1)-(3).**

Proceed-  
ings after  
auditors'  
report.

If the report made by the special auditor appears to the Registrar to disclose fraudulent or illegal acts on the part of the society or a repudiation of its contracts, or insolvency, the Registrar notifies the society and furnishes the society with a copy of the special auditor's report, allowing two weeks for a statement in answer to be filed by the society. Upon consideration of the report and of the society's answer and of any other evidence, as the Registrar may require, the Registrar renders his decision in writing and by such writing continues, suspends, or cancels the registry of the society: section 31 (1) and (2) *infra*.

Credentials  
of special  
auditor.

(2) For purposes of this Act a special auditor shall be sufficiently accredited, if he deliver to the Secretary or to any managing officer of the society, a written statement under the hand and seal of the Registrar, to the effect that the Registrar has nominated such auditor to audit the books and accounts of the society.

Compare R. S. O. 1887, c. 167 (*The Ontario Insurance Act*), s. 146.

Obstruction of such special auditor in the discharge of his duty by an officer of the society is an offence punishable on summary conviction by imprisonment without the option of a fine: subsection 5 of this section.

Expense of  
special  
audit.

(3) The expense of such special audit shall be borne by the society, and the auditor's account therefor, when approved in writing by the Registrar, shall be conclusive and shall be payable by the society forthwith.

Provided nevertheless that where an audit is requested as in sub-section 1, the persons so requesting it shall together with their requisition deposit with the Registrar proper security for the costs of the audit in a sum not exceeding \$200 as he shall determine; and where the facts alleged in the requisition appear to the Registrar to have been partly or wholly disproved by the audit, he may pay the costs thereof partly or wholly out of the deposit.

Section  
30 (3)-(4).  
Provided.

Compare 38 & 39 Vic. c. 60 (Imp.), s. 35.

The Registrar's ruling as to the costs of the audit is conclusive, and no appeal lies: see Holmes & Langton, p. 879 *et seq.*

(4) The books used by any collector for recording moneys, received for the society shall be the property of the society, nor shall any collector or officer, or employee of the society have in these or in any other of the books of account or record any ownership or proprietary right, or right of lien, whatsoever; and all such books, as well as the vouchers or documents relating to the contracts of the society, shall be deemed to be included in the audit, prescribed by this section.

Books, the  
property of  
the society

see page 616

Compare 38 & 39 Vic. c. 60 (Imp.), s. 16, ss. 9, in which "property" includes, as provided in section 4, "Books and papers," also section 32.

"Collector" is defined by sub-section 17 of section 2 (*supra*) to include every paid officer, agent or person however remunerated, who by himself or by any deputy or substitute collects premiums, fees, assessments, or other moneys for a corporation.

Collector.

The Registrar, or any person authorized under his hand and seal, has by virtue of section 45, *infra*, access to all such books, securities and

Registrar  
to have  
access to  
societies'  
books.

Section  
30 (4)-(5).

documents of a friendly society as relate to the society's contracts, at any time within reasonable business hours of every day except Sundays and holidays. Any officer or person in charge, possession, custody or control of such books, securities or papers, who refuses or neglects to afford such access to the Registrar is guilty of an offence, punishable on summary conviction by imprisonment without the option of a fine. The society, if registered, is liable to have its registry suspended; if the refusal or neglect is continued, the registry of the society is cancelled: section 45, *infra*.

Untrue entries, etc.

(5) Every director, officer, manager, agent, collector, or employee of the society, who knowingly makes or publishes, or assists to make or publish, any wilfully false statement on the society's financial affairs, or who makes or assists to make any untrue entry in any book of record, entry, or account, or who refuses or neglects to make any proper entry therein, or to exhibit the same, or to allow the same to be inspected or audited either for the general purposes of the society or for the purposes of this Act, and extracts to be taken therefrom, shall be guilty of an offence, and upon summary conviction thereof before any police magistrate or justice of the peace having jurisdiction where the offence was committed, shall be imprisoned in the Central Prison, or in any gaol of the Province with or without hard labour for a period not exceeding twelve months.

Compare R. S. C. c. 119 (*The Companies Act*), s. 45; R. S. C. c. 131 (*Trade Unions Act*), s. 18; R. S. O. 1887, c. 167 (*The Ontario Insurance Act*), s. 142; 38 & 39 Vic. c. 60 (Imp.), s. 32 (1).

For civil liabilities see *The Directors' Liability Act*, 1891, 53 Vic. c. 34 (Ont.)

Section  
30 (6), 31  
(1) (3).

Where  
society re-  
fuses or  
obstructs  
audit.

(6) When a society by its officer, employee or agent having in his custody, possession or power, the funds, books or vouchers of the society refuses to have the same duly audited as provided by section 29, and by this section, or obstructs an auditor in the performance of his duties, the Registrar upon proof of the fact may suspend or cancel the registry of such society; but such suspension or cancellation shall be appealable as hereinafter provided.

Compare 38 & 39 Vic. c. 60 (Imp.), s. 32.

So also, if the officer or person in charge of a society's books refuse or neglect to afford access to all such books, securities and documents of the society as relate to the society's contracts, the society is liable to have its registry suspended; and on continued refusal or neglect to afford such access, is liable to have its registry cancelled: section 45 *infra*. The mode of appeal provided will be found in section 51 *infra*.

**31.** (1) If the report made by the special auditor appears to the Registrar to disclose fraudulent or illegal acts on the part of the society, or a repudiation of its contracts, or insolvency, the Registrar shall notify the society accordingly, and furnish the society with a copy of the special auditor's report, allowing two weeks for a statement to be filed by the society with the Registrar in reply.

(2) Upon consideration of the special auditor's report, and of the society's statement in reply, and of such further evidence, documentary or oral, as the Registrar may require, the Registrar shall render his decision in writing, and may thereby continue, or suspend, or cancel the registry of the society; but such decision shall be appealable, as hereinafter provided.

(3) The evidence may be given under oath, which the Registrar may administer.

Evidence  
may be  
under oath.

Section  
31 (3).Fraudulent  
or illegal  
acts of  
society.53 Vic. c. 39  
(O), s. 10.

Under 53 Vic. c. 39 the procedure is by revocation or suspension of the corporate powers of a society.

" 10. (1) If after a reasonable time has been given to the corporation to be heard, it appears to the Lieutenant-Governor in Council that any body incorporated under the provisions of the Act respecting Benevolent, Provident and other Societies is using its corporate powers for any fraudulent or other unlawful purpose, it shall be lawful for the Lieutenant-Governor in Council to suspend for a limited period, or to revoke the said corporate powers, and on any revocation the corporate powers shall *ipso facto* absolutely cease and determine, except for the sole purpose of winding-up the affairs of the corporation; and the High Court upon the petition of the Attorney-General or any person interested, may by judgment or order limit the time within which the corporation shall settle and close its accounts, and may for this specific purpose, or for the purpose of liquidation generally, appoint a receiver."

The form of the Order in Council revoking the corporate powers of a society is as follows: see *Ontario Gazette* of April 11th, 1891.

" *Re THE LION PROVIDENT LIFE AND LIVE STOCK ASSOCIATION.*

" *Copy of an Order in Council approved by His Honour the Lieutenant-Governor, the 3rd day of April, A.D., 1891.*

" Upon consideration of the Commissioner's Report in the matter of The Lion Provident Life and Live Stock Association; and of the depositions

and exhibits annexed to the said report and upon the recommendation of the Hon. the Provincial Secretary, His Honour the Lieutenant-Governor by and with the advice of the Executive Council of Ontario, has been pleased to order, and it is hereby ordered that the corporate powers of the said association be revoked absolutely, pursuant to 53 Vic. c. 39, s. 10."

Section  
31 (3).

Similar proceedings were had and a similar order made in the case of the Septennial Benevolent Society of Ontario: Order in Council dated 10th August, 1891.

Under the present Act the registration of the society is suspended or cancelled. After suspension or cancellation of registry the further transaction of insurance by the society or its officers is illegal and is visited with penalties: Cf. 53 Vic. c. 39 (Ont.), s. 11. Upon notice being given to the society by the Registrar that the registry of the society is cancelled or suspended, the officer of the society, who has in his charge, custody, possession or power the accounts, account books and insurance funds of the corporation is *ipso facto* made interim receiver: section 53 (1), *infra*; and liquidation proceeds regularly as provided in section 53 *et seq.* (*vide infra*).

Under  
Ins. Corp.  
Act, 1892.

*Misapplication of Assessments.*—The statute under which defendant association was organized provided that "no part of the funds collected for the payment of death benefits shall be applied for any other purpose." It not being denied that "the advance mortuary assessment" required o

Specific  
illegalities  
or frauds.

LAW LIBRARY

Section  
31 (3).

new members are funds designed for the payment of death benefits, the use of such assessments for the payment of current expenses is a violation of law, justifying dissolution: Chicago Mutual Life Indemnity Association v. Hunt, Attorney-General, (Ill. S. C., March 15, 1891), 20 North Eastern Reporter, 55. R. S. C. c. 124, s. 39 (5) contains a similar restriction binding upon assessment life companies operating under sections 38 and 39.

*Election of officers, Fraud in.*—A statute provided that the officers of such an association shall be managed by not less than five directors, trustees or managers, elected from and by the members. Defendant's certificate of association provided for a board of eight trustees to be elected annually. At first the manager and secretary were appointed by the trustees, but in 1886 a resolution was adopted that the manager and secretary should thereafter be elected annually by the members. Blank applications for membership then in use by the association had printed upon them a blank proxy authorizing the person whose name should be inserted to act and vote for the member at all meetings, and underneath it, was a request for the applicant to sign it in blank to be filled up by the secretary. In accordance with the request a great number of these proxies were so signed and sent to the secretary. The resolution above mentioned was adopted mainly by use of these proxies. From that time on, the board of trustees ceased to control, the real governing authority being the manager and secretary, who held a sufficient number of



these proxies to perpetuate themselves in office, and conducted the business of the association as they saw fit. *Held*, a violation of law and a fraud on the members justifying dissolution: Chicago Mutual Life, etc. v. Hunt, Attorney-General, 20 North East. Rep. 55.

Section  
31 (3).

*False Numbering of Certificates.*—The officers of the association were also guilty of fraud on the members in issuing certificates of membership numbered higher than the total number of certificates issued up to that date; and it was no excuse that such false numbering was done, not to deceive new members, but merely to prevent rival associations from ascertaining the state of the business. No attempt having been made to apprise applicants of the truth, the effect was fraud: Chicago Mutual Life, etc. v. Hunt, Attorney-General, 20 North East. Rep. 55.

Every claim under an insurance contract of the society, accruing to a member, is under the Act legally payable on the expiration of sixty days after reasonably sufficient proof has been furnished to the society of the happening of the event on which such claim was by the contract to accrue: section 42, *infra*. A corporation is liable to have its registry suspended by the Registry Officer upon failure to pay an undisputed claim on an insurance contract for the space of sixty days after being legally payable, or if disputed, after final judgment and tender of a legal valid discharge: section 44 (1), *infra*; if within a further period of

*Insolvency*  
Cf. s. 2 (16).  
*supra*.



**Section  
32.**

sixty days the society has not fully paid all undisputed claims and final judgments the Registrar shall cancel the registry of the society: section 44 (3), *infra*.

**Appeal.**

The mode of appeal is prescribed in section 51, *infra*. The appeal lies to a Divisional Court of the High Court. The appellant must give security for costs in an amount fixed by the court or a Judge thereof. Two clear days' notice of the application to fix the amount of the security must be given to the Registry Officer. At least ten clear days notice of appeal and any subsequent proceeding on appeal must be given the Registry Officer. A minute of the final judgment is entered on the register and the Registry Officer issues a certificate of registry or cancels the registry granted according to the tenor of the judgment.

**Rules deliverable  
on demand**

**32.** (1) A copy of all rules of a friendly society relating to its insurance contracts and to the management or application of its insurance funds shall be delivered by the society to every person on demand, on tender of twenty-five cents.

Compare 38 & 39 Vic. c. 60 (Imp.), s. 13 (5); 39 & 40 Vic. c. 45 (Imp.), s. 9 (5); R. S. C. c. 131 (*Trade Union Act*), s. 15.

**Delivery of  
untrue  
rules.**

(2) If any officer or agent of a society, with intent to mislead or defraud, gives to any person a copy of rules other than the rules then in force, on the pretence that the same are the rules then in force, he shall be guilty of an offence; and shall, upon summary conviction thereof before any police magistrate or justice of the peace having jurisdiction where the offence was committed, be liable as for an offence committed against section 27 of this Act.

Compare 38 & 39 Vic. c. 60 (Imp.), s. 13 (6); Sections 32 (2), 33(1)  
 39 & 40 Vic. c. 45 (Imp.), s. 9 (6); R. S. C. c. 131  
 (*Trade Union Act*), s. 19.

The offender is liable on summary conviction to a penalty not exceeding \$200 and costs and not less than \$20 and costs; and in default of payment to imprisonment with or without labour for a term not exceeding three months and not less than one month. On a second or any subsequent conviction the offender is liable to imprisonment with hard labour for a term not exceeding twelve months and not less than three months: section 27 *supra*.

#### CONDITIONS IN POLICIES.

**33.** (1) Where any insurance contract made by any corporation whatsoever within the intent of section 2 of this Act is evidenced by a sealed or written instrument, all the terms and conditions of the contract shall be set out by the corporation in full on the face or back of the instrument forming or evidencing the contract; and unless so set out, no term of, or condition, stipulation, warranty or proviso modifying or impairing the effect of any such contract made or renewed after the commencement of this Act shall be good or valid, or admissible in evidence to the prejudice of the assured or beneficiary.

Terms, etc  
of con-  
tract in-  
valid  
unless set  
out in full.

This section has already in large measure been enacted piecemeal in Ontario.

For contracts of fire insurance the law has established Statutory Conditions, *vide* appendix A, which as against the insurers are deemed to be part of every contract, whether sealed, written or oral, of fire insurance entered into in Ontario with respect to any property therein or in transit therefrom or thereto. It is further required that the

Fire Insur-  
ance R.S.O.  
1887, c. 107,  
s. 114.

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**Section  
33 (1).**

ss. 115, 116.

Statutory Conditions be printed on every policy: *Ontario Insurance Act*, section 114. Variations, additions, or omissions of any of the conditions must likewise be printed on the instrument of contract, in the manner prescribed by the Act, and have force, only so far as by the Court or Judge before whom a question is tried relating thereto, they shall be held to be just and reasonable to be exacted by the company: *ibid.* ss. 115, 117. The Statutory Conditions were first enacted by *The Uniform Conditions Act* of 1876. In 1880, the Supreme Court, in *Mutual Fire Ins. Co. of Co. Wellington v. Frey*, 5 S. C. R. 82, decided that the *Uniform Conditions Act* did not apply to mutual insurance companies. In 1881, 44 Vic. c. 20 (Ont.), s. 28, enacted that the said Act should apply to such companies. In *Parsons v. Citizens Ins. Co. L. R. 7 App. Cases 96*, it was decided that the Statutory Conditions bind all policies of fire insurance made in Ontario, whether the insuring companies were incorporated or licensed by the Province or otherwise. 45 Vic. c. 20 (Ont), ss. 2, 3, 4, extended the Statutory Conditions to written and oral contracts of fire insurance. The provisions of *The Ontario Insurance Act* relating to conditions still govern all contracts of fire insurance entered into in the Province. See Appendix A.

The enactment heretofore in force relating to contracts of life insurance is as follows: "No term of, or condition, stipulation, warranty or proviso modifying or impairing the effect of any contract of life insurance made after the commencement of

this Act by any company transacting business in Ontario shall be good or valid unless such term, condition, stipulation, warranty or proviso is set out in full on the face or back of the instrument forming or evidencing the contract": 52 Vic. c. 32 (Ont.), section 4.

Section 33 (1).

In the statute 52 Vic. c. 32 (Ont.), company had the same meaning as in *The Ontario Insurance Act*, and therefore did not include societies not requiring a license for any contract of insurance within *The Ontario Insurance Act* before the passing of the Act: R. S. O. 1887, c. 167, sections 2 (4) and 3.

Life insurance, 52 Vic. c. 32 (O), s. 4.

The present section is general and includes all insurance contracts whether undertaken by a corporation registered on the Insurance License Register, or by a corporation registered as a friendly society.

Following the Statutory Conditions in fire policies the statute 52 Vic. c. 33 (Ont.), enacted statutory conditions for contracts of live stock insurance undertaken by mutual or cash mutual live stock insurance companies. These conditions are to be printed on every policy: section 54; and variations, additions, or omissions of any of the conditions must likewise be printed on the instrument of contract: section 56.

Live stock insurance, 52 Vic. c. 33, (O), ss. 54, 56

And now by this Act where any insurance contract made by any corporation whatsoever within the intent of section 2 (*supra*) is evidenced by a sealed or written instrument (see section 2 (9),

All contracts of insurance to have conditions set out in full.

**Section  
33 (1).**

*supra*), all terms and conditions of the contract shall be set out by the corporation in full on the face or back of the instrument forming or evidencing the contract.

**Effect of  
non-com-  
pliance.**

If a term or condition is not set out as above the liability of the insurer is not thereby impaired, but the term or condition, stipulation, warranty or proviso modifying the effect of the contract and so omitted, is invalid and inadmissible in evidence to the prejudice of the assured or the beneficiary.

**R. S. C. c.  
124, ss. 27,  
28.**

*The Insurance Act* of Canada, contains parallel provisions respecting contracts of life insurance. "No condition, stipulation or proviso modifying or impairing the effect of any policy or certificate of life insurance issued after the first day of January, one thousand eight hundred and eighty six, by any company doing business within Canada, under the authority of the Parliament of Canada, shall be good or valid unless such condition, stipulation or proviso is set out in full on the face or back of the policy:" s. 27.

In *Venner v. Sun Life Insurance Company*, 1890, 17 S. C. R. 394, the policy was issued "without conditions," but expressly "sur les representations, conventions et stipulations contenues dans la demande pour cette police." These representations were proved to be false in the most material particulars, and it was held that the company never became bound under the policy. For it was a sufficient compliance with section 27 of *The Insurance Act* to refer in express terms in the

policy to the stipulation contained in the application.

Section  
33 (1).

In the case of ambiguity in the contract the construction most unfavorable to the insurer will be adopted, and properly, for by universal custom it is the insurer that prepares the contract and furnishes the language used: Cooke, Life Insurance, § 3. "No rule in the interpretation of a policy is more fully established or more imperative and controlling than that which declares that, in all cases, it must be literally construed in favor of the insured, so as not to defeat without a plain necessity his claim to the indemnity, which, in making the insurance, it was his object to secure:" May on Insurance, § 175.

Conflict  
on ambiguity  
in  
conditions.

Provided that a registered friendly society may, instead of setting out the complete contract in the certificate or other instrument of contract, indicate therein by particular references those articles or provisions of the constitution, by-laws or rules which contain all the material terms of the contract not in the instrument of contract itself set out; and the society shall at or prior to the delivery over of such instrument of contract deliver also to the assured a copy of the constitution, by-laws and rules therein referred to.

In lieu of setting out the complete contract in the certificate or other instrument of contract a friendly society has the alternative of indicating by particular reference the articles in its constitution and rules which contain all the material terms of the contract not found in the instrument of contract itself. If this mode of complying with the law is adopted a copy of the constitution, rules and

**Section  
33 (2).**

by-laws must be delivered to the assured at or prior to the delivery over to him of the instrument of contract. An article or provision not indicated in the manner prescribed, or not contained in the constitution and by-laws delivered to the assured, is not admissible in evidence to the prejudice of the assured or beneficiary. It would be prudent to take from the assured such a receipt for the document delivered to him as will identify the document.

**Proviso.**

Provided also that nothing in sub-sections 1, 2 and 8 of this section contained shall be deemed to impair the effect of the provisions contained in sections 114 to 118 inclusive of *The Ontario Insurance Act*, or the effect of the provisions contained in section 56 of an Act passed in the fifty-second year of Her Majesty and chaptered 88.

The existing statutory regulation of conditions in fire insurance and mutual live stock insurance contracts (*vide supra*) are continued in full force and effect. For the statutory conditions in fire policies, see Appendix A.

Contract  
not to be  
invalidated  
by erroneous  
statement  
in  
application  
unless  
material.

(2) No contract of insurance made or renewed after the commencement of this Act shall contain, or have endorsed upon it, or be made subject to any term, condition, stipulation, warranty or proviso, providing that such contract shall be avoided by reason of any statement in the application therefor, or inducing the entering into of the contract by the corporation, unless such term, condition, stipulation, warranty or proviso is limited to cases in which such statement is material to the contract, and no contract within the intent of section 2 of this Act shall be avoided by reason of the inaccuracy of any such statement unless it be material to the contract.

This section has already been enacted in **Section 33 (2).** Ontario, so far as contracts of life insurance are 52 Vic. c. 32 (O), s. 5. concerned, by 52 Vic. c. 32 (Ont.), s. 5:—"No contract of life insurance made or renewed after the commencement of this Act, shall contain or have endorsed upon it, or be made subject to any term, condition, stipulation, warranty or proviso, providing that such contract shall be avoided by reason of any statement in the application therefor, or inducing the entering into of the contract by the company, unless such term, condition, stipulation, warranty or proviso is limited to cases in which such statement is material to the contract, and no contract of life insurance shall be avoided by reason of the inaccuracy of any such statement unless it be material to the contract." Section 28 of *The Insurance Act* of Canada contains a similar provision.

The first Statutory Condition of fire policies, Ont. Ins. Act s. 114. see Appendix A, limits the avoidance worked by non-disclosure or misrepresentation to cases in which the non-disclosure or misrepresentation was of a circumstance material to be made known to the company, in order to enable it to judge of the risk it undertakes. Similar provision is made respecting contracts of mutual live stock insurance by section 56 of 52 Vic. c. 33 (Ont.) 52 Vic. c. 33 (O), s. 56.

The misrepresentation does not need to be false Inaccuracy. or fraudulent; it is sufficient to avoid the policy if, being material, it is untrue: *Sly v. Ottawa Agricultural*, 29 U. C. C. P. 557; *Greet v. Citizens*, 27 Gr. 121, 5 A. R. 596. *Porter on Insurance*, 148.



Section  
33 (2).

"The object of the proviso is that the company shall be protected against untruthful representations whether those representations are untrue to the knowledge of the party effecting the insurance or not; the terms would *prima facie* and naturally import, in the ordinary use of language, that the policy is vitiated if the representation, made as preliminary to the contract, was not in fact true": *per* Cockburn, C.J., in *Macdonald v. Law Union Insurance Co.*, L. R. 9 Q. B. at p. 332. In *Wilkins v. The Mutual Reserve Fund Life Association* (New York, S. C. 1889), 7 New York Suppl. 589, it was held that the known falsity of a representation made by an applicant for life insurance will not vitiate the contract unless the representation was material to the contract, or was so deemed by the insurer. The fact that the representation was made in answer to a question put by the insurer will ordinarily indicate that it was deemed material; but if, nevertheless, the terms of the contract show that it was not deemed material by the insurer, its known falsity will not vitiate the insurance.

Burden of  
proof.

*Held*, also, the burden of proof of the truth of answers in the application is not on the plaintiff; their falsity must be alleged and proved by the defendant.

Warranty  
or repre-  
sentation.

A distinction has frequently been drawn between the burden of proof of breach of warranty and the burden of proof of material misrepresentation. It is thereby sought to impose upon the assured the burden of proving the truth of warranties while it rests with the insurer to prove only

the existence and non-performance of conditions arising from mere representation. It was also sought to establish that in the case of a warranty the contract is conditional on the absolute truth of the statement, whether made in good faith or not, and that the question whether such statement was or was not material was not involved: *Anderson v. Fitzgerald*, (1853) 4 H. L. Cases, 484. It became usual in applications for insurance to add an express agreement that the statements in the application contained were warranties. As the effect of considering a given statement as a warranty instead of a representation was frequently to work a forfeiture of the rights of the assured under the contract, such a statement was, in a case of doubt, construed to be a representation rather than a warranty: *Britton v. Royal Arcanum*, (1889) 46 N. J. Eq., 102; *Vivar v. Supreme Lodge Knights of Pythias*, (1890) 20 Atl. Rep. 36; *Campbell v. New England Mutual Co.*, 98 Mass. 381. Now whether warranty or representation, the forfeiture is limited to cases in which the statement in question is material to the contract. The weight of authority, also, is that the burden of proof of a breach of warranty rests on the insurer as well as does the burden of proof of a misrepresentation: *Cooke on Life Insurance*, § 14, and cases there cited.

Where a direct question is put and the answer purports to be a complete answer, any material misstatement or omission in the answer avoids the contract. But where on the face of the applica-

Questions  
not answered.

**Section  
33 (2).**

tion a question appears not to be answered at all, or to be imperfectly answered, and the contract is made, without further inquiry on the part of the insurer, the omission does not avoid the contract. Thus in the following cases it was held that the company waived the information by issuing the policy: *Sinclair v. Canadian Mutual*, 40 U. C. R. 206, 212; *American Ins. Co. v. Pieul*, S. C. Pa., 9 Penn. 520; *Liberty Hall Ass. v. Housatonic Co.*, 6 Gray 185; *Nicholls v. Fayette Mutual*, 1 Allen (Mass.); *Phoenix Co. v. Roddin*, 120 U. S. 183; *Millar v. Phoenix Mutual Co.*, 107 N. Y. 292, 301.

**No ques-  
tions  
asked.**

The mere omission of the applicant to state matter not called for by any specific or general question or not required to be made known by any terms or conditions of the contract: cf. *First Statutory Condition*, Appendix A, does not affect the validity of the contract: *Klein v. Union*, 3 O. R. 234, at page 260; *London Assurance v. Mansel*, L. R. 11 Ch. D. 363; *Rawls v. American Mutual Co.*, 27 N. Y. 282; *Humphreys v. National Benefit Asso.*, 20 Atl. Rep. 1047.

**Knowledge  
of agent.**

Assuming the soundness of the distinction drawn between statements considered as warranties and as representations, it followed, that, if the assured conditioned the contract on the absolute truth of a certain statement, there was no clear reason why the forfeiture of the contract for the untruth of such statement should be prevented, merely because the insurer or his agent knew such statement to be false. The law was so stated in *Kenyon v. Knights Templars Asso.*, 122 N. Y. 247.

Bartean v. Phoenix Mutual Co., 67 N. Y. 505; Vose v. Eagle Co., 6 Cush. (Mass.) 42. While the contrary was held in Cotten v. Fidelity and Casualty Co., (1890) 41 Fed. Rep. 506; Miller v. Mutual Benefit Company, 31 Iowa 216. It was also attempted to extend the same rule to cases of material misrepresentations: Vose v. Eagle Co., 6 Cush. (Mass.) 42; to the contrary, Newman v. Covenant Mutual Asso., 76 Iowa 56.

Section  
33 (2).

The current of decisions in our courts has been to regard the knowledge of material facts communicated to the agent as knowledge of the company: Liverpool, etc. v. Wyld, 1 S. C. R. 604; McQueen v. Phoenix, 4 S. C. R. 660; Gouinlock v. Man. and Merchants Mutual Fire, 43 U. C. R. 563; Naughton v. Ottawa Ins. Co., 43 U. C. R. 121; Brogan v. Man. and Merchants Mutual Fire, 29 C. P. 414; Brown v. Ottawa Agricultural, 42 U. C. R. 282; Sinclair v. Canadian Mutual, U. C. R. 206; Ashford v. Victoria Mutual, 20 C. P. 434; Dear v. Western, 41 U. C. R. 553 at 561; Parsons v. Queen, 43 U. C. R. 271. But if the application states that the agent of the company in filling up the application should be regarded as the agent of the applicant and not as the agent of the company, the company is not estopped from setting up the defence of misdescription by reason only of the mis-description arising from the error of the agent. Sowden v. The Standard Fire Insurance Co., 5 A. R. 290; Compton v. Mercantile, 27 Gr. 334; Shannon v. Hastings Mutual, 2 S. C. R. 394; but see Lyon v. Stadaconna, 44 U. C. R. 472. In

Agent for  
assured  
in filling up  
application.

**Section  
33 (2).**

Quinlan v. The Union Fire Ins. Co., 8 A.R. 876, the application was not signed by the assured in person but through the agent of the company and stated that the agent had made a personal survey of the risk, it was held that under the circumstances the assured was relieved from the effect of an omission which was material. But generally where the assured assumes the acts of the agent and binds himself for the truth of the statements contained in the application, he can not be relieved by the fact that the agent acted carelessly, or even faithlessly, in making out the application, Wilkins v. Mutual Reserve Fund Life Ass., (N. Y. S. C. 1889), 7 New York Supplement, 589. If the applicant, however, lays before the agent taking the application a statement of facts that is wholly true, the insurer cannot object that any statement in such application dictated or written by the agent acting upon such true statement of facts is untrue. Wilder v. Preferred Mutual Accident Assoc., (1888) 14 N. Y. State Rep. 365; Keystone Mutual Benefit Assoc. v. Jones, (1890) 20 Atl. Rep. 195, in which case the agent placed the age of the assured, who was unable to read or write and did not know his own age, at less than it really was; O'Brien v. Home Benefit Society, (New York C. A. 1890), 22 North East Rep. 954; Piedritsky v. Supreme Lodge Knights of Honor, (1889) 43 North Western Rep. 373, where the examining physician took it upon himself to write down answers other than those given by the assured; Massachusetts Co. v. Eshelman, 30 Ohio St. 647, where the agent forwarded to the insurer a spurious application, instead of

the application actually made; *Boos v. World Mutual Co.*, 64 N. Y. 236; *Sawyer v. Equitable Accident Co.*, (1890) 42 Fed. Rep. 30; *Bentley v. Owego Mutual Benefit Assoc.*, 23 N. Y. State Rep. 470; *McArthur v. Home Assoc.*, 73 Iowa 336; *Gray v. National Benefit Assoc.*, 111 Md. 531; *New Jersey Mutual Co. v. Baker*, 94 U. S. 610; but see *McCoy v. Metropolitan Co.*, 133 Mass. 82; *Franklin (Fire) Co. v. Martin*, 40 N. J. Law 568, 578. But if, knowing the presence of the untrue answer by having read it or otherwise the applicant certifies to its truth, the insurer may set up in defence the untruth: *Grattan v. Metropolitan Co.*, 92 N. Y. 274, 283.

Section  
33 (2).

In fire insurance the first statutory condition, R. S. O. 1887, c. 167, s. 114, defines the duty of the applicant. "If any person or persons insures his or their buildings or goods, and causes the same to be described otherwise than as they really are, to the prejudice of the company, or misrepresents or omits to communicate any circumstance which is material to be made known to the company, in order to enable it to judge of the risk it undertakes, such insurance shall be of no force in respect to the property in regard to which the misrepresentation or omission is made." See further, Appendix A.

What is  
material  
fact.

So far as the law of non-communication was concerned, the statutory condition left the law where it had been for the last century; *Moore v. Citizens Fire Ins. Co.*, 14 A. R. at 587, *per* Hagarty, C.J.O., citing *London Ass. Co. v. Mansel*, L. R. 11 Ch. D.

Section  
33 (2).

367. The description was held to be limited to the date at which the insurance was effected: *Pim v. Reid*, 6 M. & G. 1, but the third statutory condition forbids a subsequent material alteration of the risk prejudicial to the insurer. Where the applicant is interrogated as to such matter the first condition applies to matters relating to the "moral" as well as to the "physical" risk: *Reddick v. Saugeen*, 15 A. R. 363. As to risk of incendiarism, see *Greet v. Citizens Ins. Co.*, 5 A. R. 596. It is material for insurer to know the precise ownership of the property: *Compton v. Mercantile*, 27 Gr. 334; *Lyon v. Stadaconna Ins. Co.*, 44 U. C. R. 472; *Shaw v. St. Lawrence Co. Mutual*, 11 U. C. R. 73. But where no inquiry is made by the company it is not necessary for the assured to say anything about his title or the incumbrances on the property. He must be interested in it, but he is not bound to disclose the particular nature and modification of his interest: *Klein v. The Union Fire*, 3 O. R. 234; see also *McQueen v. Phoenix*, 4 S. C. R. 668; *Laidlaw v. Liverpool & London*, 13 Gr. 377; *White v. Agricultural*, 22 C. P. 95; *Stillman v. Agricultural*, 16 O. R. 145; *Samo v. Gore District Mut.*, 1 A. R. 545; *Hopkins v. Provincial Ins. Co.*, 18 C. P. 74. As to present cash value, see *Moore v. Citizens Fire Ins. Co.*, 14 A. R. 582; *Sly v. Ottawa Agricultural*, 29 C. P. 557. Materiality, it is decided, is entirely a question for the jury: *Parsons v. Citizens*, 43 U. C. R. 271; *Klein v. Union*, 3 O. R. 234, at 256; *Samo v. Gore District*, 2 S. C. R. 411; *Naughton v. Ottawa Agricultural*, 43 U. C. R. 121;



where the fact that a building was within one hundred feet of risk was held immaterial. And by the sub-section following the question of materiality in any contract of insurance whatsoever is made a question of fact for the jury, or for the court if there be no jury.

Section  
33 (2).

"I am not prepared," said Jessel, M.R., in *London Assurance v. Mansel*, L. R. 11 Ch. D. at p. 367, "to lay down the law as making any difference in substance between one contract of assurance and another. Whether it is life, or fire, or marine insurance, I take it good faith is required in all cases." See also *Thomson v. Weems*, L. R. 9 App. Cases at 684. In life insurance it is the duty of the applicant to make truthful answers to all questions relating to his health: *American Mutual Aid Association v. Brongan*, (1890) 11 Kentucky Law Rep. 902. As to statement that applicant is now, and ordinarily, enjoying good health, see *British Equitable Co. v. G. W. Ry. Co.*, 38 L. J. Ch. 314; *Connecticut Mutual Life Ins. Co. v. Moore*, L. R. 6 App. Cases 644. While "good health" may be regarded as equivalent to a statement that the applicant is free from disease, the statement is not falsified by proof of existence of a mere temporary ailment, unless it be such as to indicate a vice in the constitution, or be so serious as to have some bearing upon the general health and the continuance of life, or such as according to common understanding would be called a disease: *Goucher v. North-Western Traveling Men's Asso.*, 20 Fed. Rep. 596. The proviso is to guard

Life insur-  
ance.

Health.



Section  
33 (2).

against fraud on the company: *Campbell v. National Life Ins. Co.*, 24 U. C. C. P. 133. It is an equivalent statement that the applicant is in "sound health": *Brown v. Metropolitan Co.*, 65 Mich. 306; *Morrison v. Wisconsin Oddfellows' Asso.*, 59 Wis. 162. For cases in which a particular affliction or "disease" was considered, see *Cooke on Life Insurance*, § 28 and notes. For consideration of answer to a general question whether the applicant is aware of any disorder or circumstance tending to shorten life or to make an assurance more than usually hazardous: see *Watson v. Mainwaring*, 4 Taunt. 763. On meaning of "severe illness," or a "serious illness": see *Miller v. Confederation Life*, 11 O. R. 120, affirmed 14 A. R. 218; 14 S. C. R. 330; "*Masons Benevolent Society v. Winthrop*, 85 Ill. 537, 542; *Galbraith v. Arlington Mut. 12 Bush. (Ky.)* 29, 38. The words "hurt" and "wound," as used in a question contained in an application, "Have you received any wound, hurt or serious bodily injury?" means an injury to the body causing an impairment of health and strength, or rendering the person more liable to contract disease, or less able to resist its effects. A cut on the face, finger, or any part of the body, from which blood flows, though healing in a few days, is a hurt or wound, but not within the meaning of the contract: *Bancroft v. Home Benefit Association*, (N. Y. C. A. 1890), 30 N. Y. State Rep. 175.

Reference  
to physi-  
cian.

The fact that the applicant has or has not required the services of a physician or other medical attendant may be material: see *Huckman v.*

Section  
33 (2).

Fernie, 3 M. & W. 505; Connecticut Mutual Life Insurance Co. v. Moore, L. R. 6, App. Ca., at p. 651; Morrison v. Muspratt, 4 Bing. 60. For what state of facts is sufficient to prove medical attendance, see Cushman v. U. S. Co., 70 N. Y. 72; Edington v. Mutual Co., 67 N. Y. 185; Brown v. Metropolitan Co., 65 Mich. 306, 812. See also, as to truth or falsity of statements concerning the physician employed by applicant, Fidelity Mutual Life Association of Philadelphia v. Ficklin *et al.*, 20 Ins. Law Jour. 534; Numrich v. Supreme Lodge K. & L. of Honor, 13 New York Suppl. 582; Higgins v. Phoenix Mutual Co., 74 N. Y. 6, 9; Hutton v. Waterloo Co., 1 F. & F. 735; Everett v. Desborough, 5 Bing. 503.

Statements as to age have been held to be <sup>Age.</sup> material: *Ætna Co. v. France*, 91 U. S. 510; *Swett v. Relief Society*, 78 Me. 541. But by section 34 (1), *infra*, "if, the age is material to any contract within the intent of section 2, and such age is given erroneously in any statement or warranty made for purposes of the contract, such contract shall not be avoided by reason only of the age being other than as stated or warranted, if it shall appear that such statement or warranty was made in good faith and without any intention to deceive"; but the amount payable under the contract is adjusted as provided in the said section 34.

It is material that the applicant has had an application rejected by another office: *London Assurance v. Mansel*, L. R. 11 Ch. D. 363; *Ameri-*

Rejected  
applica-  
tions.

Section  
33 (2).

can Mutual Aid Society v. Brougan, 11 Ky. Law Rep. 902. And "other insurance" was held to include insurance in aid and accident associations: McCollum v. N. Y. Mutual Co., 55 Hun. 103; see also, on truth of statements concerning applications for other insurance, Continental Co. v. Chamberlain, 132 U. S. 307; Clapp v. Mass. Benefit Association, 146 Mass. 519. In Piedritsky v. Supreme Lodge Knights of Honor, 43 North West Rep. 373, it was held that an indorsement of rejection on an application of the deceased to the Knights of Pythias was not evidence of the fact of rejection. Also, Edington v. Ætna Co., 77 N. Y. 564, 572; 100 N. Y. 536, where it was held that the medical examination was no part of the application.

Relation-  
ship of  
beneficiary

It is ordinarily not material that the relationship of the beneficiary was misstated: Britton v. Royal Arcanum, 46 N. J. Eq. 102, 106; Mace v. Provident Life Insurance Association, 7 South-East Rep. 674.

Occupation.

As to statements respecting occupation of the assured, see Kenyon v. Knights Templar Association, 122 N. Y. 247; Dwight v. Germania Co., 103 N. Y. 341, 349; McGurk v. Metropolitan Co., 56 Conn. 528; Grattan v. Metropolitan Co., 80 N. Y. 281, 92 N. Y. 274.

Use of  
intoxica-  
ting  
liquors.

Whether or not the statement of the applicant that his habits are temperate is material depends on the circumstances of the case. On meaning of "temperate," and kindred expressions, see Thomson v. Weems, L. R. 9 App. Cases 571;

Brockway v. Mutual Benefit Co., 9 Fed. Rep. 249; Section 33 (2), (3).  
 Meacham v. N. Y. State Mutual, 120 N. Y. 237;  
 Knickerbocker Co. v. Foley, 105 U. S. 350; Union  
 Mutual Co. v. Reif, 36 Ohio State 597; South-  
 combe v. Merriman, C. & M. 286. On "so far  
 intemperate as to impair health," see *Ætna Co. v.*  
*Davey*, 123 U. S. 739; *Davey v. Ætna Co.*, 38  
 Fed. Rep. 650; *Odd Fellows v. Rohkopp*, 94 Pa.  
 St. 59; *Ætna Co. v. Deming*, 123 Md. 384.

Where the assured, in answer to a question, how Family.  
 many brothers he had, omitted all mention of half-  
 brothers, it was held that it was properly left to  
 the jury to say if the statement was untrue and if  
 material: *Bridgman v. The London Life*, 44 Q. B.  
 536. In *Mutual Aid Society v. White*, 100 Pa.  
 St. 12, it was held material misrepresentation that  
 the applicant made untrue statement that he was  
 "widower," in answer to question whether he was  
 married. See also *Jeffries v. Union Mutual Co.*, 1  
 Fed. Rep. 450.

(3) The question of materiality in any contract of insurance Materiality how de-  
 whatsoever shall be a question of fact for the jury, or for the cided.  
 court if there be no jury; and no admission, term, condition,  
 stipulation, warranty or proviso to the contrary contained in  
 the application or proposal for insurance, or in the instrument  
 of contract, or in any agreement or document relating thereto  
 shall have any force or validity.

The section declares the law as decided by the  
 current decisions both in England and in Ontario:  
 see *Parsons v. Citizens*, 43 U. C. R. 271; *Samo v.*  
*Gore District*, 2 S. C. R. 411; *Klein v. Union*,  
 3 O. R. 234 at 256; *Naughton v. Ontario Agricul-*

Section 33 (3), (4) tural, 43 U. C. R. 121; Bridgman v. London Life, 44 U. C. R. 536; see also Taylor on Evidence, 58.

## ENTRY AFTER LOSS.

Insurer's right of entry after loss. (4) After any loss or damage to insured property, the insuring corporation, called hereinafter the insurer, has by a duly accredited agent an immediate right of entry and access sufficient to survey and examine the property, and make an estimate of the loss or damage; but the insurer is not entitled to the disposition, control, occupation, or possession of the insured property, or of the remains or salvage thereof, unless the insurer undertakes reinstatement, or accepts abandonment of the property.

R. S. O. 1887, c. 167, s. 114. Statutory condition 13, see Appendix A, provides that "any person entitled to make a claim under this policy is to observe the following directions:—"(a) He is forthwith after loss to give notice in writing to the company." This notice to the company is to afford an opportunity to the insurer of inspecting the property; a license to enter was therefore implied: cf. Porter on Ins., 202, 226; Wightman v. Western F. & M. Ins. Co., 2 Bennett at p. 336, where the right was assumed to exist: New York Life Ins. Co. v. Delavan, 2 Bennett 20; Franklin Fire Ins. Co. v. Up de Graff, Sansum 833. So statutory condition 13 (d) provides that the claimant is "to exhibit for examination all that remains of the property which was covered by this policy." As "property" includes buildings and premises generally, the condition clearly implied a right of entry to examine and ascertain the extent of the loss and the particulars of salvage: cf. Statutory Condition 5, Appendix A, *infra*.

The statement of the law in Griswold, Fire Underwriters Text Book, 1575, that the insurer through its agents has a general supervisory interest over the remnants of property covered by the policy until after inventory or appraisal, and that such authority should be exercised when necessary for its security or preservation from further damage, goes too far. Cf. also Bunyon on Fire Ins., 3rd ed. p. 53:—"When a fire occurs the insurers, it would seem, have a right to enter upon the premises for the purpose of ascertaining the damage, and, when it is necessary, to retain possession of them for a reasonable time, and a condition to this effect will usually be found in the policy; but if they retain possession for an unreasonable time they will be liable to damages to the assured: Oldfield v. Price, 2 F. & F. 81; see Roth v. Stephenson, C. P., 3 July, 1866, Ins. Gazette, 1 Aug. 1866. And thus in a case in the Lord Mayor's Court, Cumberland v. The Albert Insurance Co., Ins. Record, 11 May, 1866, damages were recovered on the ground that the insurers had kept possession for two months, entirely stopping the plaintiff's trade. The Judge and counsel seem to have thought that the insurers had no right to enter upon the premises. But in this they were in error. The right to enter would seem to follow from the nature of the contract, as well as from the community of interest between the insurers and the assured, as from the right of reinstatement of the former. A forcible entry would not of course be justified, but the refusal to permit the entry of the insurers after a fire would be a

Section  
33 (4).

Control of  
insured  
property is  
in assured

**Section  
33 (4).**

very important fact in any litigation which might arise upon a claim. If the agents of the office enter upon the premises they have no right to exclude the assured from access to the salvage. In a case at *nisi prius* in 1870 the court observed that the officers ought to give notice of an examination of the salvage so as to allow the parties interested (*Masters v. Lefevre*, C. P., 1 February, 1870), to be present." The cases, however, cited by Bunyon do not support the right of even temporary possession by the insuring company.

**Rights of  
insurer  
and as-  
sured.**

The respective rights of the insurer and assured are by the new Act now for the first time definitely declared. After the loss the insurer has, by a duly accredited agent, an immediate right of entry and access sufficient to survey and examine the property, and make an estimate of the loss or damage. This is a general estimate; and after the assured has separated the damaged from the undamaged goods, the insurer is entitled to entry and access sufficient to make an appraisement or particular estimate of the loss or damage, *vide infra*. But the insurer is not entitled to the disposition, control, occupation or possession of the insured property, or of the salvage, unless the insurer undertakes reinstatement, see Stat. Cond. 18, or accepts abandonment of the property: see Stat. Cond. 5. It will be evidence of intention to reinstate, or to accept abandonment, when the insurer takes possession of the property or salvage. Where the insurer accepts abandonment, he is liable as for a constructive total loss.

Section  
33 (4).Duty of  
assured  
after loss.

After any loss or damage to insured property, it is the duty of the assured when, and as soon as practicable to secure the insured property from damage, or from further damage, and to separate so far as reasonably may be, the damaged from the undamaged property, and to notify the insurer when such separation has been made; and thereupon the insurer shall be entitled to entry and access sufficient to make an appraisalment or particular estimate of the loss or damage.

Statutory Conditions 13 (d) enacted that it was the duty of the assured "to separate as far as reasonably may be the damaged from the undamaged goods, and to exhibit for examination all that remains of the property which was covered by the policy," Appendix A, *infra*. This obligation of the assured flows naturally from the principle of non-abandonment which was affirmed in the fifth statutory condition:—"When property insured is only partially damaged, no abandonment of the same will be allowed unless by consent of the company or its agent." For abandonment may be by conduct as well as by formal notice, as in the case of an assured who does not intervene for the protection of his undamaged or partially damaged property. His duty as salvor does not first begin when he is making out the proofs of loss required by the thirteenth statutory condition, but as soon after the loss as is practicable. The present clause declares the law in this sense; so that it is now the clear duty of the assured, as soon as practicable, to secure the insured property from damage or further damage, and to separate, as far as reasonably may be, the damaged from the undamaged property.



**Sections  
33(4), 34(1)**

Proviso.

Provided that at any time after the loss or damage the insurer and the assured may under a term of the contract of insurance or by special agreement, make a joint survey, examination, estimate, or appraisal of the loss or damage, in which case the insurer shall be deemed to have waived all right to make a separate survey, examination, estimate, or appraisal thereof.

If the insurer and the assured have made a joint appraisal of the loss or damage the insurer has lost his right of making a separate survey or appraisal thereof.

**ERROR IN STATEMENT OF AGE.**

Error in age not to avoid contract; but benefit to abate.

**34. (1)** Where the age of a person is material to any contract within the intent of section 2, and such age is given erroneously in any statement or warranty made for purposes of the contract, such contract shall not be avoided by reason only of the age being other than as stated or warranted, if it shall appear that such statement or warranty was made in good faith and without any intention to deceive; but the person entitled to recover on such contract shall not be entitled to recover more than an amount which bears the same ratio to the sum that such person would otherwise be entitled to recover as the premium proper to the stated age of such person bears to the premium proper to the actual age of such person,—the said stated age and the actual age being both taken as at the date of the contract.

52 Vic. c. 32  
(O), s. 6.

This section was first enacted of life insurance contracts only by 52 Vic. c. 32 (Ont.) s. 6:—“(1) Where a contract of life insurance or the application therefor contains, or the person entering or proposing to enter into it, makes, for the purpose of its being entered into, any statement or warranty as to the age of the person in respect of whose life

the contract is made, such statement shall not be avoided by reason only of the age being greater than stated or warranted, if it shall appear that such statement or warranty was made in good faith and without any intention to deceive, but the person entitled to recover on such contract shall not be entitled to recover more than an amount which bears the same proportion to the sum which such person would otherwise be entitled to recover as to the premium proper to the stated age of such person bears to the premium proper to the actual age of such person, the said stated age and actual age being both taken as at the date of the contract."

Section  
34. 1).

R. G.

The provision is now extended to all contracts of insurance where the age of a person is material to the contract. Thus the age of the person whose fidelity is to be insured is usually demanded and may be material; or in accident insurance contracts, the age may be found to be material to the risk. The error in statement of age must appear to have been made in good faith and without any intention to deceive. For the purposes of the calculation the premium taken is not the particular office premium, but the net annual premium as shown in the H<sub>M</sub>. Table of the Institute of Actuaries of Great Britain, interest being taken at 4½ per cent. per annum. Thus, when the true age was 40, but the stated age was 35, the amount recoverable on an ordinary life policy of \$1,000, payable at death would be computed as follows:—  
The net annual premium to secure \$1,000 payable

Section is  
of general  
applica-  
tion.

Section  
34 (1).

at death is, at age 35, \$18.71; while at age 40, the net annual premium is \$22.47. The amount recoverable is, therefore, \$832.66.

Before the passing of the statute 52 Vic. c. 32, a misrepresentation of the age of the assured, although unintentional would, if material to the particular contract, have voided the contract: Attorney-General v. Ray, L. R. 9 Ch. App. 397.

Erroneous  
statement  
of age in  
claim.

Where the plaintiff, in her claim, stated the age of deceased at two years more than did his own application for insurance, she was allowed to explain it by her own evidence, and it was held that the defendants were bound to prove a misrepresentation on the part of the deceased: Hayes v. Union Mutual Life Ass. Co., 44 U. C. R. 360.

Provido.

Provided that in no case shall the amount receivable exceed the amount stated or indicated in the contract.

The amount stated in the policy is in all cases the maximum recoverable.

Premium.

(2) For purposes of the next preceding sub-section the word "premium" shall mean the net annual premium as shewn in the Hm. table of the Institute of Actuaries of Great Britain, the rate of interest being taken at  $4\frac{1}{2}$  per cent. per annum.

*supra page 516*

Compare 52 Vic. c. 32 (Ont.), s. 3, *supra*.

HM. TABLE OF THE INSTITUTE OF ACTUARIES OF  
GREAT BRITAIN.—INTEREST AT  $4\frac{1}{2}$  PER CENT

*Values of Annuities, and Single and Annual Premiums for  
Assurance of a Unit.*

AGE.	PRESENT VALUE OF AN- NUITY OF 1 TO BE RECEIVED FOR UN- EXPIRED PORTION OF LIFE.	PRESENT VALUE OF AN ASSURANCE OF 1 PAYABLE AT DEATH.	ANNUAL PREMIUM TO SECURE 1 PAYABLE AT DEATH.
10	18.459 2	.162042	.008327
1	18.384 9	.165243	.008524
2	18.289 2	.169366	.008780
3	18.175 8	.174246	.009087
4	18.049 3	.179695	.009433
15	17.913 7	.185533	.009809
6	17.773 8	.191561	.010204
7	17.634 1	.197575	.010603
8	17.499 4	.203374	.010994
9	17.375 0	.208734	.011360
20	17.261 7	.213609	.011697
1	17.153 4	.218274	.012024
2	17.046 7	.222870	.012350
3	16.936 6	.227613	.012690
4	16.819 2	.232665	.013057
25	16.693 6	.238076	.013456
6	16.561 2	.243776	.013881
7	16.422 9	.249730	.014333
8	16.281 3	.255830	.014804
9	16.136 8	.262050	.015292
30	15.989 3	.268404	.015798
1	15.838 8	.274882	.016324
2	15.683 7	.281564	.016877
3	15.523 4	.288467	.017458
4	15.357 5	.295612	.018072
35	15.186 2	.302988	.018719
6	15.010 0	.310573	.019399
7	14.829 7	.318340	.020110
8	14.645 0	.326290	.020856
9	14.455 2	.334463	.021641
40	14.259 6	.342890	.022470
1	14.056 4	.351638	.023355
2	13.844 6	.360758	.024302
3	13.624 6	.370232	.025316
4	13.397 9	.379993	.026392
45	13.164 5	.390044	.027537
6	12.926 7	.400284	.028742
7	12.685 5	.410671	.030008
8	12.440 5	.421221	.031340
9	12.190 8	.431973	.032748
50	11.936 3	.442934	.034240

HM. TABLE. 4 $\frac{1}{2}$ -CONTINUED.

AGE.	PRESENT VALUE OF AN- NUITY OF 1 TO BE RECEIVED FOR UN- EXPIRED PORTION OF LIFE.	PRESENT VALUE OF AN ASSURANCE OF 1 PAYABLE AT DEATH.	ANNUAL PREMIUM TO SECURE 1 PAYABLE AT DEATH.
1	11.675 6	.454159	.035829
2	11.407 9	.465690	.037532
3	11.134 2	.477476	.039350
4	10.855 7	.489466	.041285
55	10.572 6	.501658	.043349
6	10.285 8	.514010	.045545
7	9.995 5	.526509	.047884
8	9.702 0	.539146	.050378
9	9.405 3	.551926	.053043
60	9.106 8	.564777	.055881
1	8.807 7	.577658	.058898
2	8.508 7	.590534	.062105
3	8.210 6	.603370	.065508
4	7.914 3	.616130	.069117
65	7.618 7	.628859	.072964
6	7.323 0	.641591	.077086
7	7.026 4	.654367	.081527
8	6.728 1	.667211	.086336
9	6.426 2	.680212	.091596
70	6.123 8	.693231	.097311
1	5.823 8	.706151	.103484
2	5.530 3	.718792	.110071
3	5.247 3	.730978	.117007
4	4.978 8	.742538	.124195
75	4.725 0	.753470	.131611
6	4.476 2	.764181	.139545
7	4.234 5	.774592	.147979
8	3.998 3	.784764	.157007
9	3.765 3	.794794	.166787
80	3.538 7	.804554	.177266
1	3.323 3	.813829	.188243
2	3.124 7	.822381	.199380
3	2.940 5	.830312	.210711
4	2.774 3	.837469	.221886
85	2.618 9	.844163	.233266
6	2.463 7	.850844	.245645
7	2.299 3	.857925	.260034
8	2.125 4	.865411	.276892
9	1.919 8	.874266	.299427
90	1.686 4	.884318	.329188
1	1.445 7	.894681	.365817
2	1.198 2	.905337	.411847
3	.930 3	.916874	.474991
4	.664 0	.929337	.557885
95	.408 4	.939340	.666964
6	.175 8	.949335	.807418
7		.956988	.956988

(3) If the error in age includes a fractional part of a year exceeding a half year, such fractional part shall be computed as a whole year, but if the fractional part does not exceed a half year it shall be wholly disregarded in the computation.

Section  
34 (3)-(5).

Fractional  
part of a  
year.

Compare 52 Vic. c. 32 (Ont.), s. 6 (2).

The practice of American companies is to take the nearest birthday, while it is usual for Canadian companies to compute the age as on the next (subsequent) birthday. Hereafter, a fractional part of a year exceeding a half-year is to be computed as a whole year, while any lesser fractional part is not regarded at all in the computation.

(4) When, by the terms and for the purposes of the contract, the age of the person in respect of whose age the contract is made is taken to be greater than the actual age of such person, the number of years added to such age shall, for purposes of the calculation provided for by this section, be added to the true age of such person.

Where age  
is taken as  
greater  
than  
known age

Compare 52 Vic. c. 32 (Ont.), s. 6 (3).

To find the ratio the number of added years is likewise added to the true age.

(5) Where any error is discovered in respect of any contract of life insurance, or of the premium or premiums paid or to be paid upon such contract, nothing herein contained shall be construed in any way to prevent at any time before the maturity of the contract an adjustment between the insurer and the assured of the amount or amounts payable in respect of any insurance effected, or of the premium or premiums paid or to be paid.

Error may  
be adjust-  
ed between  
insured  
and assur-  
ed at any  
time  
before  
maturity  
of contract

After the maturity of the claim, the amount recoverable is ascertained in the manner provided in sub-section 1 of this section. After adjustment

PREMIUM TO  
E 1 PAYABLE  
ATH.

35829  
37532  
39350  
41285  
43349  
45545  
47884  
50378  
53043

55881  
58898  
62105  
65508  
69117

72964  
77086  
81527  
86336  
91596

97311  
103484  
110071  
117007  
124195

131611  
139545  
147979  
157007  
166787

177266  
188243  
199380  
210711  
221886

233266  
245645  
260034  
276892  
299427

329188  
365817  
411847  
474991  
557885

666964  
807418  
956938

Sections  
34 (5), 35  
(1)-(2).

by mutual agreement the amount agreed upon is conclusive of the amount of the company's liability under the contract. Similarly a compromise agreed on with an adjuster, who comes pursuant to a notice from the company that he will come and close the matter, in the absence of knowledge as to limitation of his authority, is binding upon the company: *Millers' National Ins. Co. v. Kinneard*, 20 Ins. Law Journal, 223.

#### INSURABLE INTEREST.

Interpreta-  
tion.

**35.** (1) In this section the word "life" includes accident, sickness, infirmity, casualty and disability; and the expression "life insurance" includes any contract of insurance having for its subject the life, health, safety, or physical or mental condition of a person.

Compare section 2 (12) a, *supra*.

Insurable  
interest  
necessary  
to support  
contract.

(2) In order to render valid any contract of life insurance, the beneficiary under the contract, being other than the assured or the parent or *bona fide* assignee or nominee of the assured, or a person entitled under the will of the assured or by operation of law, must have had at the date of the contract a pecuniary interest in the duration of the life or other subject insured.

The Act. 14 Geo. III. c. 48 (Imp.), is law in Ontario: *Dowker v. Canada Life*, 24 U. C. R. 591; *Craigen v. North American Life*, 13 S. C. R. 278.

It is by that statute enacted as follows:—

14 Geo. III.  
c. 38.

"Section 1. No insurance shall be made by any person or persons, bodies politic or corporate, on the life or lives of any person or persons, or on any other event or events whatsoever," see *Pater-son v. Powell*, 9 Bing. 320; *Roebuck v. Hamilton*,

Section  
35 (2).

Cowp. 737; also *Good v. Elliott*, 3 T. R. 693; *Morgan v. Pebrer*, 3 Bing. N. C. 457; *Cook v. Field*, 15 Q. B. 460), "wherein the person or persons for whose use, benefit, or on whose account such policy or policies shall be made, shall have no interest, or by way of gaming or wagering; and every assurance, made contrary to the true intent and meaning hereof, shall be null and void to all intents and purposes whatsoever.

"Section 2. It shall not be lawful to make any policy or policies on the life or lives of any person or persons, or other event or events, without inserting in such policy or policies the person or persons name or names interested therein, or for whose use, benefit, or on whose account such policy is so made or underwrote: *Hodson v. The Observer Life A. Co.*, 8 E. & B. 40; *Evans v. Bignold*, L. R. 4 Q. B. 622; see *Collett v. Morrison*, 9 Hare 162.

"Section 3. In all cases where the insured hath interest in such life or lives, event or events, no greater sum shall be recovered or received from the insurer or insurers than the amount or value of the interest of the insured on such life or lives, or other event or events:" *Hebdon v. West*. 3 B. & S. 579.

The Act does not void generally contracts made contrary thereto, but only as between the insurers and the assured. It is a defence to the insurers only, if they choose to avail themselves of it: *Worthington v. Curtis*, L. R. 1 Ch. D. 419. Nor

Effect of  
statute,



**Section  
35 (2).**

does the act prohibit individuals from effecting insurances upon their own lives, provided that be done *bona fide*; but it is an evasion of the statute to procure another, in whose life he had no interest, to insure it with his money and for his benefit, though ostensibly for the advantage of the party insuring: *Wainwright v. Bland*, 1 M. & W. 32; *Shilling v. The Accidental Death Insurance Co.*, 2 H. & N. 42. The third section of the statute refers in time to the effecting of the policy; the assured is therefore entitled to recover the value of his interest at that time not exceeding the amount indicated in the policy, notwithstanding any subsequent diminution or extinction of that interest: *Dalby v. India and London Life Ass. Co.*, 15 C. B. 365; *Law v. The London Indisputable L. I. Co.*, 1 K. & J. 223. It is not necessary that the assignee of a life policy should have any interest or have paid any consideration for the assignment; for he stands upon the rights of the party who effected the insurance, and the statute of 14 Geo. III. only applies to the original parties, not to assignees: *Ashley v. Ashley*, 3 Sim. 149; see also *Cook v. Black*, 1 Hare 390.

Who have  
insurable  
interests.

Trustees.

Creditors.

A trustee may insure in respect of the interest of which he is trustee: *Tidswell v. Ankerstein*, Peake, 151. It seems one person may insure the life of another as trustee for him: *Collett v. Morrison*, 9 Hare, 162. A creditor has an insurable interest in the life of his debtor: *Anderson v. Edie*, Park, 640; *Bruce v. Garden*, L. R. 5 Ch. 33, but not if the debt be an illegal one: *Dwyer v. Edie*,

Park, 639. An employer has an insurable interest in the life of his servant, and *vice versa*: Hebdon v. West, 3 B. & S. 579. In general, any one who has a pecuniary claim against another, Worthington v. Curtis, L. R. 1 Ch. D. 419, has an insurable interest in the life of the latter. A woman engaged to marry the assured held to be a "dependent," in, Parke v. Welch, 33 Ill. App. 188; but see 53 Vic. c. 39, s. 3, Appendix A, *infra*. A father has not such an interest in his son's life as would entitle him to insure it: Worthington v. Curtis, L. R. 1 Ch. D. 419; Halford v. Kymer, 10 B. & C. 724. On the ground of the right a father has to the earnings of his minor child it has been held that he has an insurable interest, in Grattan v. National Co., 15 Hun. 74; Loomis v. Eagle Co., 6 Gray (Mass.) 397; Mitchell v. Union Co. 45 Me. 104, where son was also debtor. It is now provided, sub-section 6 of this section, that in respect of insurances heretofore or hereafter effected on the lives of persons under twenty-one years of age, where such insurance has been effected by a parent upon the life of his child, such insurance shall not be invalid by reason only of the parent's want of pecuniary interest in the life of the child. Where the contract was for the benefit of a sister of the assured the relationship was held sufficient to divest the transaction of the semblance of a wagering contract: Actna Co. v. France, 94 U. S. 561. So of a contract for the benefit of a grandson: Elkhart Mutual Assoc. v. Houghton, 103 Md. 286. But in Barton v. Connecticut Mutual Ins. Co., 19 Ins. Law Jour, 57, it was held that the

Section  
35 (2).

Employer

Defendant.

Father.

a Relation-  
ship.

Grandson

**Section  
35 (2).**Grand-  
daughter

Son-in-law

mere relationship will not give a granddaughter an insurable interest in the life of her grandfather. Neither has a son-in-law, by reason of his relationship, an insurable interest in his mother-in-law, nor does he acquire an interest as creditor because she is dependent upon him for support: *Stanbaugh v. Blake*, 19 Ins. L. Jour. 473. Mere relationship, apart from pecuniary interest, is held insufficient to establish an insurable interest, in the following cases: *Guardian Mutual Co. v. Hogan*, 80 Ill. 35; *Charter Oak Co. v. Brant*, 47 Mo. 419; *Singleton v. St. Louis Mutual*, 66 Mo. 63; *Lewis v. Phoenix Mutual*, 39 Conn. 100; *Mitchell v. Union Co.*, 45 Me. 104. The rule, however, seems to be established that when the relationship is of such a character as to be presumptive or conclusive evidence of a pecuniary interest, it is presumptively or conclusively, as the case may be, evidence of the existence of an insurable interest: *Cooke on Life Insurance*, § 61. Thus the relationship of husband and wife carries with it conclusive evidence of the wife's pecuniary interest in her husband's life, he being under an obligation to support her. A brother has been held to presumptively have an interest in his brother's life, *Lewis v. Phoenix Mutual*, 39 Conn. 100, where the presumption was rebutted by proof that there was, in fact, no pecuniary interest. So also has a husband in his wife's life: *Currier v. Continental Co.* 57 Vt. 496. There are again relationships that are not even presumptive evidence of interest. Thus a nephew has been held to have no such interest in the life of his aunt: *Corson's Appeal*, 113 Pa. St. 438; nor

Husband.

Wife.

Other  
relation-  
ships.

an uncle in that of his nephew: *Singleton v. St. Louis Mutual*, 66 Mo. 63; nor an adult son in that of his father: *Guardian Mutual Co. v. Hogan*, 80 Ill. 35; nor a step-son in that of his step-father: *U. B. Mutual Aid Assoc. v. McDonald*, 122 Pa. St. 324; nor a daughter in that of her mother: *Continental Co. v. Volger*, 89 Ind. 572.

It is clear law, however, that any one who takes an insurance upon his life, may make the policy payable to any person whom he may name in the policy, and that such person need have no interest in the life insured: *North American Life v. Craigen*, 13 S. C. R. 278; *Olmsted v. Keyes*, 85 N. Y. 593; *Mallory v. Travellers' Co.*, 47 N. Y. 52; *Campbell v. New England Mutual Co.*, 98 Mass. 381; *Scott v. Dickson*, 108 Pa. St. 6; *Bloomington Mutual Association v. Blue*, 120 Ill. 121; *Lemon v. Phoenix Mutual*, 38 Conn. 294; *Goldbaum v. Blum*, 15 South West Rep. 564. But the law will not allow the provisions of the statute to be evaded by an insurance being nominally effected by a person on his own life, but really for another person who pays the premiums and to whom the policy is assigned, or who is named as the beneficiary: *Knights & Ladies of Honor v. Burke*, 20 Ins. L. Jour. 1051. The mere circumstance that some other party paid the premiums is not *per se* sufficient evidence that the insurance was not for the benefit of the person in whose name it was effected: *Vezina v. New York Life*, 5 S. C. R. 30.

In *Brown v. Freeman*, it was doubted whether the statute 14 Geo. III. c. 48, prohibiting insur-

Section  
35 (2).

Premium  
paid by  
another  
than the  
assured.

Friendly  
Society  
contracts.

Section  
35 (2).

ance by persons having no interest, applies to benefit insurance societies constituted under the Imperial Friendly Societies Act. But the benefits of such societies are founded on a system of voluntary contributions by members, and not on contractual payments: 38 and 39 Vic. c. 60 (Imp.), s. 8; while society insurance under the meaning of this Act is matter of contract. In *Vivar v. Supreme Lodge K. of P.*, (N. J. S. C. 1890), 20 Atl. Rep. 36, it was held that when a person effects an insurance on his own life, and in the policy designates another person as the payee of the sum insured, the latter may maintain an action on the policy without showing an insurable interest. But where the beneficiary, not having an insurable interest, paid the dues for the assured without the knowledge of the society, it was held that the beneficiary could not recover the benefit nor the dues he had paid: *Knights and Ladies of Honor v. Burke*, 20 Ins. L. Jour. 1051; see also, *Schonfield, et al. v. Turner*, 12 South West Rep. 626; *Whitmore, et al. v. Supreme Lodge K. and L. of Honor*, 13 South West. Rep. 495. Where the beneficiary was the affianced wife, and the member died before marriage, it was held that the benefit was payable to the member's next of kin: *Palmer v. Welsh*, 23 North West. Rep. 412; see also section 37 (1) *infra*. But one who has an insurable interest in the life of another, and has taken out a policy thereon, may assign such policy to one who has no such insurable interest: *Craig v. N. A. Life* (1886), 13 S. C. R. 278; *Souder v. Home Friendly Society of Baltimore*, 20 Atl. Rep.

137; Ashley v. Ashley, 3 Sim. 149; and other cases cited, *supra*. Section 35 (2)-(3).

The present Act declares the law to be that to support any contract of life insurance the beneficiary, being other than the assured, or the parent, or *bona fide* assignee or nominee of the assured, or a person entitled under the will of the assured or by operation of law, must have had at the date of the contract a pecuniary interest in the duration of the life or other subject insured. A special exception is made in certain insurances on lives of minors: sub-section 6 of this section. Under this Act.

For the purposes of this section "life" expressly includes accident: cf. Schilling v. Accidental, 1 F. & F. 116, 2 H. & N. 43; sickness, infirmity, casualty and disability; and "life insurance" includes any contract of insurance having for its subject the life, health, safety, or physical or mental condition of a person: see section 1, *supra*.

(8) No corporation shall insure, or pay on the death of a child under 10 years of age, any sum of money which added to any sum payable on the death of such child by any other insuring corporation exceeds the following amounts respectively, that is to say:—

If any such child dies under the age of 2 years	\$ 25
If any such child dies under the age of 3 years	30
If any such child dies under the age of 4 years	35
If any such child dies under the age of 5 years	40
If any such child dies under the age of 6 years	83
If any such child dies under the age of 7 years	92
If any such child dies under the age of 8 years	110
If any such child dies under the age of 9 years	129
If any such child dies under the age of 10 years	147

**Section**  
**35 (3), (4).**

**Proviso.**

Provided that nothing in this section contained shall apply to existing insurances on the lives of children under ten years of age, or apply to insurance on the lives of children of any age where the person effecting the insurance has a pecuniary interest in the life of the assured.

Read with sub-section 6 of this section, the proviso takes out of the prohibition of 14 Geo. III. c. 48 and validates existing insurances on the lives of children, if effected by a parent, although the amount exceeds the amount allowed by the scale, and although the parent has no pecuniary interest in the life insured. When the person effecting the insurance has such a pecuniary interest, 14 Geo. III. c. 48, has no application.

**Where**  
**insurance**  
**excessive.**

(4) Where the age of the assured is, at the date of such contract, less than ten years, and the insuring corporation has knowingly, or without sufficient inquiry entered into any contract prohibited by the next preceding sub-section, the premiums paid thereunder shall be recoverable from the corporation by the person or persons paying the same, together with legal interest thereon.

This sub-section takes the case out of the former rule that if an illegal insurance be effected, the parties being *in pari delicto* the assured cannot in the event of loss recover the insurance money, nor can he recover the premiums paid: *Andree v. Fletcher*, 3 T. R. 266; *Cope v. Rowlands*, 2 M. & W. 149, 157; *Allkins v. Jupe*, L. R. 2 C. P. D. 375. The person paying the premiums can now recover them back with interest if the insurer entered into the prohibited contract knowingly or without sufficient inquiry. If, however, such person repre-

sented the age to the insurer as other than the true age in order to induce the contract, he cannot recover the premiums paid therefor.

Section  
38-4-6.

(5) Every corporation undertaking or effecting insurances on the lives of children under ten years of age shall print sub-sections 1, 2, 3, 4 and 5 of this section in conspicuous type upon every circular soliciting, and upon every application for, and every instrument of contract of, such insurance; and any contravention of this sub-section shall be punishable as for an offence against section 27, all the provisions of which section shall equally apply to an offence committed against this sub-section.

Sub-secs. 1  
to 5 to  
appear  
on cir-  
cular, etc.

see Law 317

Compare section 2 (14), *supra*, as to assessment insurance. Section 27 enacts [sub-section (2)] that an offender shall be liable, upon summary conviction before any police magistrate or Justice of the Peace having jurisdiction where the offence was committed, to a penalty not exceeding \$200 and costs, and not less than \$20 and costs; and in default of payment the offender shall be imprisoned with or without hard labour for a term not exceeding three months and not less than one month. On a second or any subsequent conviction he shall be imprisoned with hard labour for a term not exceeding twelve months and not less than three months.

(6) In respect of insurances heretofore or hereafter effected on the lives of persons under twenty-one years of age, where such insurance has been effected by a parent upon the life of his child, such insurance shall not be deemed to be invalid by reason only of the parent's want of pecuniary interest in the life of the child.

Insurance  
effected by  
parents  
upon the  
lives of  
minor  
children  
generally.



Section  
35 (6)-(7).

In United States Courts, it has been held that a parent has an insurable interest in the life of his minor child. For while mere relationship is not, perhaps, of itself sufficient to support a policy, yet, if the beneficiary has any claim upon the assured for support, or otherwise, so that there is any present or prospective advantage of a pecuniary character likely to result to the beneficiary by the continuance of the life insured, the policy is upheld: Addison on Contracts, 8th Am. ed. II., App. p. 232; Mitchell v. Union Life Ins. Co., 45 Me. 184; Loomis v. Eagle Life Ins. Co., 6 Gray. (Mass.) 396; Cooke on Life Ins., § 61. But in Halford v. Kymer, 10 B. & C. 724, it was held, under the statute 14 Geo. III. c. 48, that the father had not an insurable interest in the life of a minor child: see, also, Worthington v. Curtis, L. R. 1 Ch. D. 419; Tucker v. Mutual Benefit Co., 50 Hnn. 60. Now the Act expressly declares that an insurance effected by a parent upon the life of his minor child shall not be deemed to be invalid by reason only of the parent's want of pecuniary interest in the life of the child.

Minors of  
fifteen  
years and  
upwards  
competent  
to effect  
insurance  
on their  
own lives  
and give  
discharge.

(7) In respect of insurance heretofore or hereafter, by any person not of the full age of twenty-one years but of the age of fifteen years or upwards, effected upon his own life, for either his own benefit or for the benefit of his father, mother, brother or sister, the assured shall not, by reason only of his minority, be deemed incompetent to contract for such insurance or for the surrender of such insurance, or to give a valid discharge for any benefit accruing, or for money payable under the contract.

Cf. R. S. O. 1887, c. 172, s. 10:

"A person under the age of 21 years, elected or admitted as a member of a society, or appointed to any office therein, shall be liable to the payment of fees and otherwise, under the rules of the society, as if he were of full age."

Sections  
35 (7), 36

So in *Chicago Mutual Indemnity Assoc. v. Hunt*, 127 Ill. 257, it was held that a minor is capable of becoming a member of a mutual benefit society.

see page 517  
518

# ACCIDENT INSURANCE.

**36.** In every contract of insurance against accident, or casualty, or disability, total or partial, the event insured against shall be deemed to include any bodily injury, either happening without the direct intent of the person injured, or happening as the indirect result of his intentional act, such act not amounting to voluntary or negligent exposure to unnecessary danger; and no term, condition, stipulation, warranty, or proviso of the contract varying the aforesaid obligation or liability of the corporation shall as against the assured have any force or validity except in so far as such variation is by the Court or judge, before whom a question relating thereto is tried, held to be under the special circumstances of the case just and reasonable.

What  
accident  
includes.

This section defines what the event insured against in accident insurance shall be deemed to include. The courts have sometimes had to ignore the strict intent of conditions cutting down the obligation of the insurer in order to find for a meritorious claimant: see *Winspear v. Accident Ins. Co.*, L. R. 6 Q. B. D. 42; *Lawrence v. Accidental Co.*, L. R. 7 Q. B. D. 216.

Section  
36.

What accident includes was considered by the court in *Hutchcraft's Executors v. Travellers Ins. Co. of Hartford*, (Ky. C. of Appeals, 1888), 18 Ins. Law Jour. 315; 87 Ky. 300.

What  
accident  
includes.

"Accidents are of two kinds: First, those that befall a person without any human agency, as the killing of a person by lightning. Here the elemental properties of lightning and its flash are not caused or controlled by human agency; but the fact that the person was struck by unintentionally placing himself within its range is as to him an accident. Second, those that are the result of human agency. The latter are divided as follows: *First*, that which happens to a person by his own agency, as if he is walking or running, and accidentally falls and hurts himself. Here he falls by reason of his agency in walking or running, but he did not intend to fall. *He did not intend to fall.* He did not foresee that he would fall in time to avoid it. The fall was therefore accidental. *Second*, that which befalls a person by the agency of another person, without the concurrence of the latter's will; as where one standing on a scaffold unintentionally lets a brick fall from his hand, and it strikes a person below. Here the dropping of the brick, as it was not intended by the former, and was unforeseen by the latter, is in the broadest sense an accident. *Third*, that which a person intentionally does, whereby another is unintentionally injured; as where one intentionally fires a gun in the air, and accidentally shoots another person. Here the act of firing the

gun was intentional, but the shooting of the person was unintentional. Therefore, on the part of the person firing the gun, the shooting of the other would be accidental, though not in as broad a sense as in the former case, because some part of his act was intentional; but as to the person shot, it was by purely accidental means. *Fourth*, so also, as we think, if one person intentionally injures another, which was not the result of a rencontre or the misconduct of the latter, but was unforeseen by him, such injury as to the latter, although intentionally inflicted by the former, would be accidental. When the injury is not the result of the misconduct or the participation of the injured party, but is unforeseen, it is as to him accidental, although inflicted intentionally by the other party. In other words, we do not regard it as essential, in order to make out a case of injury by accidental means, so far as the injured party is concerned, that the party injuring him should not have meant to do so; for, if the injured party had no agency in bringing the injury on himself, and to him it was unforeseen—a casualty—it seems clear that the fact that the deed was wilfully directed against him would not militate against the proposition that as to him the injury was brought on by ‘accidental means.’ ”

Accident then is a bodily injury happening without the direct intent of the person injured, even though it may be the indirect result of his intentional act: *Mutual Accident Assoc. v. Barry*, 131 U. S. 100, 121, a case of injury caused by

**Section  
36.**

jumping from platform; *North American Company v. Burroughs*, 69 Pa. St. 43; see as to injury happening while exercising with Indian clubs: *McCarthy v. Travellers' Co.*, 8 Ins. L. Jour. 208; or while lifting burdens: *Martin v. Travellers' Co.*, 1 F. & F. 505. An accidental bodily injury may include a series of events, some of which, if considered separately, would not be regarded as accidental bodily injuries: *Mallory v. Travellers' Co.*, 47 N. Y. 52, 2 Ins. L. J. 839, where a wound did not of itself cause death, but did cause the assured to fall into the water where he was drowned. So also bodily disease may be a link in the chain of circumstances, though such disease or condition of the body itself does not come within the definition of accident: *Isitt v. Railway Passenger Co.*, L. R. 22 Q. B. D. 504, in which "death from the effects of injury caused by accident," was held to include death from pneumonia caused by a cold that would not have happened but for the weakened condition of the assured produced by the accident; so also of apoplexy resulting from injuries: *National Benefit Assoc. v. Grauman*, 107 Ind. 288; see also *Snyder v. Travelers' Co.*, 7 Ins. L. Jour. 23; *Sinclair v. Maritime Passengers' Co.*, 3 E. & B. 478, in which it was held that sunstroke was not an accident; so also, *Dozier v. Fidelity & Casualty Co.*, 20 Ins. L. Jour. 794. If the injury happens as the indirect result of the assured's intentional act, such act must not, under the above section, amount to voluntary or negligent exposure to unnecessary danger. The following have been held to be within the exception of voluntary exposure to danger:—Driving alone on dark night in a

• Exposure  
to danger.

network of railway tracks: *Neill v. Travelers' Co.*, 12 S. C. R. 55; crossing railway track on a dark rainy night: *Travelers' Co. v. Jones*, 80 Ga. 541; walking on railway track: *Tuttle v. Travelers' Co.*, 134 Mass. 175; crossing railway track in front of approaching train: *Cornish v. Accident Co.*, L. R. 23 Q. B. D. 453; being thrown while standing on steps of a railway car in motion: *Box v. Railway Passenger Co.*, 56 Iowa, 664; riding on the platform of a railway car, but otherwise if impelled by nausea or overcome by heat within the car: *Marx v. Travelers' Ins. Co.*, 18 Ins. L. Jour. 727; injury by breaking of rope by which assured was escaping from police officers: *Shaffer v. Travelers' Ins. Co.*, 19 Ins. L. Jour. 285; see also *Tucker v. Mutual Benefit Co.*, 50 Hun. 50; *National Benefit Assoc. v. Jackson*, 114 Ill. 533, a case of death in course of employment; *Mair v. Railway Passenger Co.*, 37 L. T. R. 356; in *Schneider v. Provident Co.*, 24 Wis. 28, exception was held not to include injury while getting on train in motion at a rate of speed less than that of a man walking; see also *Provident Co. v. Martin*, 32 Md. 310; but see *Badenfield v. Massachusetts Mut. Acc. Ass.*, 20 Ins. L. J. 716; nor death from stepping from train through hole in bridge, *Burkhard v. Travelers' Co.*, 102 Pa. St. 262; see *Reynolds v. Equitable Accident Assoc.*, 17 N. Y. St. Rep. 337, as to injury from lifting or over-exertion; *Stone v. U. S. Casualty Co.*, 34 N. J. Law, 371, as to fall from building. Whether the assured voluntarily exposed himself to unnecessary danger is a question for the jury: *Cotten v. Casualty & Fidelity Co.*, 20 Ins. L. J. 8. In cases

Section  
36.Burden of  
proof and  
evidence.

where the defence is set up that the act of the assured amounted to voluntary exposure to unnecessary danger the burden of proof is on the insurer: *Freeman v. Travelers' Co.*, 144 Mass. 572.

Evidence of external injuries unsupported by proof how they were received is admissible in an action on an accident policy. The presumption is that such injuries are accidental and not intentionally inflicted by the insured or another. Hence proof of external injuries resulting in death establishes a *prima facie* case of death from bodily injury through accidental means, even though it be claimed that they were intentionally inflicted: *Cronkhite v. Travelers Co.*, 19 Ins. Law Jour. 267. In *McGlinchy v. Fidelity and Casualty*, 18 Ins. Law Jour. 128, it was held that the dead body is sufficient visible injury. So where the assured died from rupture of a blood vessel due to the physical and mental strain of a runaway it was held that this was death from bodily injury happening through accidental means. Where evidence as to suicide is conflicting and evenly balanced, death from accident will be presumed: *Ingersoll v. Knights of Golden Rule*, (U. S. C. C.), 21 Ins. Law Jour. (1891) 276.

When the accident policy contains a condition vacating the contract in the event of "suicide" simply, the current of recent decisions flows strongly towards limiting suicide to what is termed "*sane* suicide;" and some companies, therefore, add to "suicide" the words "sane or insane," with the view of excluding from the risk self-destruction

committed under any circumstances whatsoever. See form of accident policy in Appendix C. *infra*.

Section  
36.

Any variation of the obligation of the insurer as defined by this section is void as against the assured except in so far as such variation is by the court or Judge, before whom a question relating thereto is tried, held to be under the circumstances of the case just and reasonable.

So also in the case of policies of fire insurance issued with variations in the statutory conditions, the variations have validity so far as by the court or Judge, before whom a question is tried relating thereto, held to be just and reasonable to be exacted by the company: R. S. O. c. 167, ss. 115, 117.

In *Parsons v. Queen Ins. Co.*, 2 O. R. 45, followed in *Smith v. City of London Ins. Co.*, 11 O. R. 38, it was laid down generally that any variation of the statutory conditions is *prima facie* unjust and unreasonable. In the latter case it was pointed out that "unjust and unreasonable" is not an equivalent expression to "more onerous and burthensome." A varied condition must not, however, be more stringent than the statutory condition: *Ballagh v. Royal*, 5 A. R. 87, in which case it was held that the reasonableness of a condition is to be tested with relation to the circumstances of each case at the time the policy is issued: see also, *Butler v. Standard*, 4 A. R. 391; *Peoria Sugar Refining Co. v. Canada Fire & Marine Ins. Co.*, 12 A. R. 418. In *May v. Standard*, 5 A. R. 622, *Patterson, J.A.*, laid down that "conditions dealing with the same subjects as those given by the

Just and  
reasonable.



Sections  
36, 37 (1).

statute and being variations of the statutory conditions should be tried by the standard afforded by the statute and held not to be just and reasonable if they impose upon the insured terms more stringent or onerous or complicated than those attached by the statute to the same subject or incident."

The Divisional Court may determine whether the condition was a just and reasonable one; it is not necessary that the question be first raised at the trial: *Reddick v. Saugeen Mutual Fire*, 15 A. R. 363.

How far the *ratio decidendi* in cases of variation of the statutory conditions of fire policies will be applicable to terms and condition of accident policies must hereafter be determined by the court.

#### INSURANCE FOR BENEFIT OF WIVES AND CHILDREN.

Wives' and  
Children's  
Act to  
apply.

**37.** (1) The *Act to secure to Wives and Children the benefit of Life Insurance* shall apply to all lawful contracts of insurance made by friendly societies registered under this Act.

51 V. c. 22,  
ss. 1 and 2.

In *re O'Heron*, 11 P. R. 422, it was held that the *Act to secure to Wives and Children the benefit of Life Insurance* did not apply to insurances in societies incorporated under *The Benevolent Societies Act*. The Statute 51 Vic. c. 22 in terms declared society insurance to be within the protection of the Act; and in *Swift v. The Provincial Provident Institution*, 17 A. R. 66, the decision in *re O'Heron* was overruled and society contracts, apart from the declaratory sections of 51 Vic. c. 22, were held to be within the intent of R. S. O. 1887, c. 136. Now it is enacted that chapter 136

shall apply to all lawful contracts of insurance made by registered friendly societies, and sections 1 and 2 of 51 Vic. c. 22 are repealed; see the next sub-section. For the text of chapter 136, as amended by later statutes, see Appendix A.

Section  
37 (1).

The question has arisen when the rules of the society are inconsistent with the provisions of R. S. O. 1887, c. 136, which should govern. For section 11 of *The Benevolent Societies Act* enacts that, "when under the rules of a society, money becomes payable to or for the use or benefit of a member thereof, such money shall be free from all claims by the creditors of such member; and when, on the death of a member of a society, any sum of money becomes payable under the rules of the society, the same shall be paid by the treasurer or other officer of the society to *the person or persons entitled under the rules thereof, or shall be applied by the society as may be provided by such rules; and such money shall be, to the extent of \$2,000, free from all claims by the personal representatives or creditors of the deceased; and in case any sum is paid in good faith to the person who appears to the treasurer, or other officer to be entitled to receive the same, or is applied in good faith for the purposes by the rules provided, no action shall be brought against the treasurer, or other officer, or the society in respect thereof; but nevertheless if it subsequently appears that the money has been paid to the wrong person, the person entitled thereto may subsequently recover the amount with interest from the person who has wrongfully received it.*"

R. S. O.  
1887, c. 172,  
s. 11.

**Section  
37 (1).****Mingeaud  
v. Packer.**

In *Mingeaud v. Packer, et al.*, 21 O. R. 267, the deceased was insured in a society incorporated under *The Benevolent Societies Act*; his wife being dead, he caused the certificate to make the insurance money payable to his children. Upon the occasion of his marrying again a new certificate was issued at his request making the money payable to his second wife. On an interpleader issue, it was held by the Divisional Court reversing the decision of the trial Judge, that the effect of 51 Vic. c. 22 (Ont.) was to make the first certificate subject to the provisions of R. S. O. 1887, c. 136, and that the rules of the society, in so far as they were inconsistent with such provisions, were modified and controlled by them; and that the certificate became a trust for the children under section 5 of chapter 136, and so long as the objects of the trust remained, ceased to be under the control of the deceased, except only in accordance with sections 5 and 6, which did not authorize him to revoke the certificate and replace it by the subsequent one.

On appeal to the Court of Appeal, the Court was equally divided, and therefore the appeal was dismissed.

Now, by the first sub-section of this section, chapter 136 is declared to apply to all lawful contracts of insurance of registered friendly societies; and section 63 (2) expressly repeals all prior inconsistent enactments.

(2) Sections 1 and 2 of the Act passed in the 51st year of Her Majesty's reign and chaptered 22 are hereby repealed; also section 4 of the said Act is amended by striking out therein the words "of the said Act" wherever they occur and inserting in lieu thereof the words "of chapter 186 of the Revised Statutes."

Sections  
37 (2), 38(1)

51 V. c. 22,  
ss. 1, 2, re-  
pealed;  
s. 4  
amended.

Provided that nothing herein contained shall be construed to exclude from the benefit of chapter 186 of the Revised Statutes any contract heretofore made by a friendly society. Proviso.

The following Acts with respect to insurance for benefit of wives and children have been passed by the Legislature of Ontario:—29 Vic. c. 17; 33 Vic. c. 21, ss. 1, 2; 35 Vic. c. 16; 36 Vic. c. 19; 40 Vic. c. 7; The Revised Statutes, 1887, c. 129; 41 Vic. c. 8; 44 Vic. c. 15; 47 Vic. c. 20; 48 Vic. c. 28; The Revised Statutes, 1887, c. 136; 51 Vic. c. 22; 53 Vic. c. 39; *The Insurance Corporations Act, 1892*, s. 37. For the text of the law now in force, with annotations, see Appendix A.

#### DISCRIMINATION BETWEEN ASSURED.

**38.** (1) This section shall apply only to corporations licensed by competent authority to undertake the contracts or any of the contracts enumerated in the sub-divisions lettered (a) and (d) of the 12th sub-section of section 2 hereof and for purposes of the present section the word "insurance" shall mean any or all of the said enumerated contracts and the word "policy" shall include any instrument serving the purpose of a policy; and the word "licensed" shall include corporations authorized by any document of authority issued under sections 38 & 39 of *The Insurance Act of Canada*.

Applica-  
tion of  
s. 38.

Within the intent of this section are corporations licensed by the Province and by the Dominion of Canada, including associations authorized under

Section  
38 (1)-(2)

sections 38 and 39 of *The Insurance Act* of Canada, see *supra*, section 6 (2), to undertake the contracts or any of the contracts following:—

“(a) Insurance against death, sickness, infirmity, casualty, accident, disability, or any change of physical or mental condition; and

“(d) Contracts of endowment, assessment, endowment, tontine, semi-tontine, life-time benefits, annuities on lives; or contracts of investment involving tontine or survivorship principles for the benefit of persisting members; or any contract of investment involving life contingencies: section 2 (12), *supra*. This section does not apply to corporations registered on the Friendly Society Register.

No discrimination to be made between the assured when of the same expectancy etc.

(2) In respect of any contract or contracts of insurance, or any agreement or agreements therefor, made after the commencement of this section with any assured, or intending assured, for any sum of, or sums amounting to, \$5,000 or upwards, no corporation or agent shall make, as between persons of the same expectation of life, and whose lives are otherwise equally eligible, and who are insured on the same plan, any discrimination in the amount of premium charged, or in return of premium dividends, or in payment of bonuses, or in bonus additions, or otherwise.

This sub-section came into force on and from the date of the passing of the Act, viz., the 14th April, 1892: sub-section 14, *infra*. No discrimination is to be made between assured of the same expectancy of life and whose lives are otherwise equally eligible and who are insured on the same plan, in the amount of premium charged, or in

return of premium dividends, or in payment of bonuses, or in bonus additions or otherwise. The section may not be evaded by issuing separate policies for several amounts under \$5,000, for if the aggregate of the sums amount to \$5,000 the contracts are within the terms of the prohibition. So also a refund of part of the premium would be such a discrimination between the assured; but not a *bona fide* change in the table of rates, taking effect as to all policies of the same class issued after the adoption of the new tariff.

A corporation which "rebates" in contravention of the section is liable to have its registry suspended or cancelled. For upon proof that a corporation has wilfully, and after notice from the Registry Officer, contravened any of the provisions of this Act, the registry of the corporation may be suspended or cancelled. A contravention of this section is an offence: sub-section 13 of this section, *infra*. Every offence committed by a corporation is deemed to have been also committed by every officer of the corporation bound by virtue of his office or otherwise to fulfil any duty whereof such offence is a breach: section 60, *infra*.

A discrimination which is within the intent of this sub-section is prohibited, and is made an offence. A contract of insurance made in consideration of such an unlawful agreement is itself unlawful. Two consequences would seem to follow:—*First*, that the balance of premium, if any, is not recoverable from the assured by the company; *second*, that the contract is not enforceable

Section  
38 (2).

Effect on  
the con-  
tract.

**Section**  
**38 (2)-(3).**

by the assured: Mellish, *et al.* v. The Shirley and Freemantle Board of Health, L. R. 16, Q. B. D. 446; followed in Whitley v. Bailey, L. R. 20, Q. B. D. 201; see also notes under section 3, *supra*.

The policy  
to set out  
the actual  
contract  
and true  
considera-  
tion.

(3) No agent, sub-agent, broker, or other person acting for, or soliciting or procuring business for the corporation shall make any contract of insurance or agreement as to any contract of insurance other than that which is expressed in the policy issued, or to be issued, nor in the case of any contract of insurance for \$5,000 or upwards shall any corporation, agent, sub-agent, broker, or other person, pay or allow, or offer to pay or allow, directly or indirectly, as inducement to insurance any rebate of premium, or any special favour or advantage whatever other than is specified in the policy issued or to be issued.

And no  
rebate or  
differential  
rate to be  
given.

This sub-section also came into force on and from the date of the passing of the Act, viz., the 14th April, 1892: sub-section 14, *infra*.

This sub-section enacts that whatever the contract may be the policy shall set out the actual contract and consideration. It does not follow, however, if a rebate of premium has been allowed the assured, that the fact of setting it out in the policy legalizes the contract or condones the offence. It would seem rather to afford cogent evidence that the second sub-section of this section had been contravened. For that sub-section forbids any discrimination to be made between the assured when of the same expectancy, and whose lives are otherwise equally eligible, and who are insured on the same plan. But see *State v. Schwarzechild*, Me. S. J. C. 1891, 20 Ins. L. J. 861.

Section  
38 (4).

(4) No person, not being the chief agent or the chief managing officer of the corporation, shall, directly or indirectly, act as insurance agent, sub-agent or broker, or shall in such capacity under any other designation, solicit or procure any insurance, or application or proposal therefor, for any corporation, without having first obtained an agent's certificate of registry from the Provincial Department of Insurance as hereinafter provided.

Only persons holding certificates of agency to act as agents of life insurance companies.

This sub-section takes effect on the 1st day of January, 1893: sub-section 14, *infra*, and like the other provisions of this section, has no application to friendly societies: sub-section 1, *supra*. By sub-section 1 of this section, "insurance" means any or all of the contracts enumerated in section 2 (12), sub-division (a) and (d). An uncertified agent is prohibited under penalty, as in sub-section 13 of this section provided, from soliciting insurance for any corporation. Whatever be the designation a person may work under, if in the capacity of agent he canvasses for insurance, he is within the prohibition. Remuneration would seem here to be the test of agency. The chief agent, *i.e.*, the chief officer of the corporation in Ontario, if the principal office or place of business of the corporation be not in Ontario, cf. section 2 (21), *supra*, or the chief managing officer of the corporation, is exempt from the requirement of registry. The corporation is, also, prohibited from accepting from an unregistered agent or person any application or proposal for a policy of insurance other than a policy insuring such unregistered agent or person himself: sub-section 12 of this section, *infra*.



**Section  
38 (5)-(7).****Insurance  
Agents'  
Register.****Particulars  
registered.**

(5) The Registry Officer shall on or before the first day of July, 1892, cause to be opened and kept a register which may be known as the Insurance Agents' Register, and therein he shall cause to be entered the name and address of every person whom he shall find legally entitled to registry, together with the date of his finding; also the term for which, in the absence of suspension, revocation or cancellation, the registry is to endure, which term shall begin as from the date of the said finding, and shall end not later than the 30th June then next ensuing; also, if, during the term, the registry has been suspended, or revived or revoked, or cancelled, the date and authority for such suspension, revivor, revocation, or cancellation.

Persons desiring to register on the Insurance Agents' Register must make application for registry. (For form of Application see Appendix B, *infra*.) With his application, the applicant must produce a recommendation from the manager of a Canadian, or from the chief agent of a foreign insurance corporation legally authorized to transact insurance in Ontario: sub-section 6 of this section, *infra*. The form of application has indorsed upon it a form of recommendation; see Appendix B, *infra*. The registry of an agent is revoked if the agent is convicted of an offence against this Act: sub-section 11 of this section, *infra*.

**Material  
on which  
register  
may be  
granted.**

(6) Every applicant, at his first application to be registered as an insurance agent, shall produce, to the satisfaction of the Registry Officer, a recommendation from the manager of a Canadian, or from the chief agent of a foreign insurance corporation legally authorized to transact business in Ontario; but, having once been registered, the agent may transfer his services to another corporation without renewal of the certificate then unexpired.

If the agent, after initial registry, has not been convicted of an offence against the Act, he obtains renewal of registry from year to year as of course.

Section  
38 (6)-(9).

(7) To all persons registered as in sub-section 5, the Registry Officer shall issue under his hand and the seal of his office a certificate of registry, or of renewed registry as the case may be, setting forth that it has been made to appear to him that the person is entitled to registry as an insurance agent and that he is accordingly registered for the term stated on the certificate.

Issue of  
agent's  
certificate  
of registry.

The certificate of registry so granted states the term for which the registry is to endure. If the registry is an initial one such term begins as from the date of the finding, and ends not later than the 30th June then next ensuing: sub-section 5 of this section, *supra*. Other certificates also expire on the 30th June in each year, but are renewable from year to year.

(8) The fee payable in respect of each certificate shall be as Fee hereinafter prescribed.

In all cases the fee is \$2.00: section 62, sub-section 2 of Division I.; sub-sections 1 (h) and 2 (h) of Division II.

*supra* page 579

(9) In the months of February and July of each year the Registry Officer shall cause to be published in the *Ontario Gazette* a list of the insurance agents standing registered at the date of the list; also upon a new agent being registered, or upon the registry of an agent being suspended, revived, revoked, or cancelled, he shall cause notice thereof to be published in the *Ontario Gazette*.

Public  
notice to  
be given  
of agent's  
registry.

Compare section 26 (1) *supra*.

**Section  
33 (10).**

Section 26  
to apply.

(10) The provisions of section 26 shall apply equally to evidence in any cause, matter, proceeding or trial under this section.

Section 26 enacts:—A list or notice published in the *Ontario Gazette* over the name of the Registry Officer, shall, without further proof, be received in any court, and before all justices of the peace and others as *prima facie* evidence of the facts set forth in such published list or notice, sub-section 2; that official publications are evidence, sub-section 3; that the seal or signature of the Registry Officer shall be admissible in evidence without proof of its authenticity or of the official character of the person signing, sub-section 4; that a certificate under the hand of the Registry Officer and the seal of his office, that on a stated day the corporation or person mentioned therein stood registered or did not stand registered within the meaning of this Act, or that the registry of any corporation or person was originally granted, or was revoked, or was cancelled on a stated day, shall be *prima facie* evidence in any court or elsewhere of the facts alleged in the certificate, sub-section 5; that copies of or extracts from any book, record, instrument or document in the office of the Registry Officer certified by him to be true copies or extracts and sealed with the seal of his office shall be *prima facie* evidence of the same legal effect as the original in any court or elsewhere: sub-section 7.

Section  
38 (11)-(13).

(11) If any registered agent is convicted of an offence against this Act, it shall be the duty of the Registry Officer upon proof of such conviction, to revoke or, pending an appeal from the conviction, to suspend, and if the conviction is affirmed on appeal, then to revoke the registry of the person convicted; and the person so convicted shall not be entitled to apply for revivor of registry for the term of three years from the date of the conviction.

Conviction of offence to operate as revocation of registry; no revivor for three years.

The revocation of registry is in addition to the penalty enacted by sub-section 13 of this section, *infra*. Notice of revocation of registry is given in the *Ontario Gazette* by the Registry Officer: sub-section 9, *supra*.

(12) No corporation, nor any officer, agent or employee of a corporation, nor any person canvassing or soliciting for insurance shall accept from any unregistered agent or person any application or proposal for a policy of insurance other than a policy insuring such unregistered agent or person himself.

No insurance other than personal to be taken from unregistered agents.

While it is unlawful for others than persons holding certificates to act as agents of life insurance companies (sub-section 4, *supra*), it is equally unlawful for the company to accept proposals for insurance from uncertificated persons. An offence by a corporation is an offence by the officers thereof: section 60, *infra*.

(13) Any person who contravenes any of the provisions of this section shall be guilty of an offence and, upon summary conviction thereof before any police magistrate or justice of the peace having jurisdiction where the offence was committed, shall be liable as for an offence committed against section 27 of this Act, and all the provisions of the said 27th section shall equally apply in the case of an offence committed against this section.

Penalty for breach of section.

Provisions of s. 27 to apply

Section  
38 (13)-(14)

For a first offence the penalty enacted in section 27, *supra*, is a fine not exceeding \$200 and costs, and not less than \$20 and costs; in default of payment the offender shall be imprisoned with or without hard labour for a term not exceeding three months and not less than one month. On a second or any subsequent conviction, the offender shall be imprisoned with hard labour for a term not exceeding twelve months, and not less than three months, section 27 (2) *supra*. Any person may be prosecutor; and one-half of any fine shall, when received, belong to Her Majesty for the use of the Province, and the other half shall belong to the prosecutor: section 27 (3), *supra*. Any person appealing from a conviction must, before being released from custody, give satisfactory security for the amount of the penalty, costs of conviction, and appeal: section 27 (4), *supra*. In any trial the burden of proving registry is on the person charged: section 27 (5), *supra*. Informations or complaints must be laid or made in writing within one year after the commission of the offence: section 27 (6), *supra*.

Proviso.

Provided, that when, by virtue of reciprocal legislation any other Legislature in Canada accepts as valid within its jurisdiction the insurance agents' license of Ontario, the Registry Officer shall have authority to indorse as valid for Ontario the like licenses of such Legislature.

At present no such reciprocal legislation exists and agents who are within the intent of this section must make application for registry.

(14) This section shall take effect as to sub-sections 1, 2 and 3 on and from the passing thereof; and as to sub-sections 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 on and from the 1st day of January, 1893.

Sections  
39 (14) 39 (1)  
Com-  
mence-  
ment of  
section.

*The Insurance Corporations Act, 1892*, became law on the 14th day of April, 1892.

### LIABILITY OF MEMBERS OF SOCIETY.

**39.** (1) The liabilities of any member of a friendly society under his contract shall at any date be limited to the assessments, fees and dues of which at that date notice has been actually given by the society.

Limitation  
of mem-  
ber's  
liability  
in friendly  
society.

In the case of *Angus McDonald, receiver of the Mutual Benefit Asso. of Rochester v. Ross Lewin*, 29 Hun. 87, the Supreme Court of New York decided that the neglect of the defendant to pay an assessment for thirty days after notice thereof had *ipso facto* under the rules of the society determined his membership; but that he was, nevertheless, liable for certain assessments previously made, and also for all losses happening prior to the time when he ceased to be a member, though no assessment therefor had then been made: see, also, *Korn v. Mutual Ass. Soc.*, 6 Cranch, 192; *Iowa State Mutual Ins. Co. v. Prosser*, 11 Iowa, 115. It is now enacted that the liabilities of a member of a friendly society under his contract are limited to the assessments, fees, and dues of which notice has at that date been actually given.

The society's books are the evidence of membership, and for all whose names are standing thereon the certificate holder is entitled to the benefit of an assessment: *Lender's Executors v. Ins. Co.*, 4

Books of  
society.

Section  
39 (1).

McCra. 149. So in an action against a member for assessments, where the defendant denies having the policy when called upon to produce it, the entries on the company's books, and the application for the policy, after the defendant's signature thereto has been verified, are competent evidence of membership: *New Era Life Assn. v. Rossiter*, 19 *Ad. Rep.* 140.

The Board of Directors or its executive committee are the proper parties to make an assessment: *Dial v. Valley Mutual Life Assn.*, 18 *Ins. Law Jour.* 322. In *New Era Life Assn. v. Weigle*, 19 *Ins. Law Jour.* 82, it was decided that the solvency of a company proposing to insure is a material consideration for the assured, and a misrepresentation on that point by the agent which induces the applicant to insure in a worthless company, is a fraud which renders the contract voidable. Such fraud may be set up as a defence to an action to recover the amount of an assessment. And where the by-laws of a benevolent association stipulate that the members shall only be subject to one assessment for each death claim, and an assessment is made, but the claim is not paid in full, the members are not subject to a second assessment, whether the amount realized was sufficient or not: *People ex rel., Meyers v. Masonic Guild and Mutual Ben. Assn.*, Court of Appeals of N. Y. June 2, 1891, 20 *Ins. Law Jour.* 858.

Section  
39 (2).

(2) By paying or tendering payment of said assessments, fees and dues and giving notice thereupon of his withdrawal by a writing delivered, or by registered letter to the society, any member shall become thereby released from all further liability under his contract.

Under section 43, *infra*, such notice of withdrawal may be given by letter, delivered at the chief office of the society in Ontario, or by registered post letter addressed to the corporation, its manager, or agent, at such chief office, or by written notice given in any other manner to an authorized agent of the corporation.

In *Borgraefe v. Knights of Honor*, 26 Mo. App. 218, it was laid down that the entering into a voluntary association, the remaining in it and the performance of duties incumbent upon the member, by reason of his membership, are purely voluntary. Consequently, the member may withdraw when he pleases without the consent of the association, nor can it, after such withdrawal, impose any new obligation upon him.

The by-laws of a life association provided that a member might at any time withdraw from the association by giving notice in writing of his intention and paying all assessments and dues to date; in an action on a certificate after the death of the member, it was held that a notice of withdrawal by the deceased was a bar to the action, though the company had not assented or dissented thereto, nor had erased his name from the roll of membership: *Cramer, et al. v. Masonic Life Assoc. of Western New York*, 9 N. Y. Suppl. 356.

When  
withdrawal  
complete.



**Section  
40 (1).**

## FORFEITURE OF BENEFITS.

Notice  
before  
forfeiture  
of benefit.

**40.** (1) No forfeiture or suspension shall be incurred by any member of a friendly society, or person insured therein, by reason of any default in paying any contribution or assessment, except such as are payable at fixed dates, until after notice to the member stating the amount due by him, and apprising him that in case of default of payment by him within a reasonable time, not being less than thirty days, and at a place, to be specified in such notice, his interest or benefit will be forfeited or suspended, and until after default has been made by him in paying his contribution or assessment in accordance with such notice.

Notice.

No forfeiture is incurred by a member of a friendly society by reason of any default in paying assessments, except such as are payable at fixed dates, until after notice to the member. The sum, payable on the monthly (or other recurring pay-day) may vary from month to month; but the day of the month must be fixed, otherwise notice must be given as afterwards provided. It is law, apart from the statute, that, when the contract or by-laws of a society provide for notice, and such notice be not given, no tender of the amount of the assessment is necessary in order to prevent a forfeiture of membership. For the member is entitled to notice of an assessment before he can be declared in default for its non-payment: *Hall v. Supreme Lodge K. of H.*, 24 Fed. Rep. 450; *Covenant Mutual v. Spies*, 114 Ill. 463. The giving of the notice in conformity with the laws of the society is a condition precedent: *Farrie v. Supreme Council*, 15 N. Y. St. Rep. 155; *People ex rel. McQuien v. Theatrical Mechanical Asso.*

(1890), 8 N. Y. Suppl. 678; *Agnew v. A. O. U. W.*, 17 Mo. App. 254; *Gellatly v. Mutual Ben. etc.*, 6 N. W. Rep. 627. The proviso to this sub-section enacts that in all cases notice may be effectually given if a written or printed notice to the effect set out in the section is delivered or by registered post prepaid is sent to the member or left at his last known place of abode by or on behalf of the society: see *infra*.

Section  
40 (1).

The notice must state the amount due by the member and must apprise him that in case of default by him within a reasonable time, not being less than thirty days, and at a place, to be specified in such notice, his interest or benefit will be forfeited or suspended. In *Siebert v. Chosen Friends*, 23 Mo. App. 268, the general rule was laid down that where the special law of the notice prescribes the form and manner in which it is to be given, especially when a forfeiture may result, the party to be affected will not be bound by a notice given in any other form or manner. Thus a notice sent by a life insurance company to a policy holder stating when his next quarter's premium falls due and that members neglecting to pay when their premiums are due are carrying their own risk, does not comply with the provision of a statute (in this case, Laws, N. Y. 1877, c. 321) that a policy shall not be forfeited for the non-payment of the premium, unless a notice shall be mailed and addressed to the holder at his last known post-office address, informing him, among other things, that unless the premium shall be paid within thirty

Form and  
contents of  
notice

**Section  
40 (1).**

days from the mailing of the notice, "the policy and all payments thereon shall be forfeited and void." For the phraseology of the notice sent was not so clear as the language of the statute: *Phelan v. Northwestern Mutual Life Insurance Co.*, 20 North East Rep. 827. In *Bates v. Detroit Mut. Ben. Assoc.*, 17 N. W. Rep. 67, where the defendants were insisting on a forfeiture, the Court held the view that "forfeitures of policies of insurance are not to be favored. The beneficiaries under them are perhaps, we may safely say, in two-thirds of the cases, persons not learned in the technicalities of the language in which they are not unfrequently couched, and in construing them courts will, whenever a forfeiture is claimed, preserve, if possible the equitable right of the holder. The two things omitted in this notice mailed were to be notified to Mr. M.; and the time for making payment, which gave the right to the forfeiture claimed, did not begin to run until the proper notice was given. \* \* \*" See also *Covenant Mut. Ben. Assoc. v. Spies*, 114 Ill. 463; *Supreme Lodge Knights of Honor v. Johnson*, 78 Md. 110.

But defects of form merely are not material, where the notice gives the member actual information of the assessment: *Karcher v. Supreme Lodge*, 137 Mass. 36.

**Waiver of  
proper  
notice.**

"The object of stipulations as to the form and manner of service of notice of assessment is to point out to the member the way in which he is to expect the notice, and to protect him in his right to have knowledge and information of the time

when and amount which he will be required to pay. The member may waive compliance with these purely technical requirements, and if he actually receives without objection the notice to which he is entitled, and acknowledges the receipt of the notice, or in any way acts upon it, but does not pay the assessment, he waives the right to receive it in the manner and form as agreed upon in the contract:" Niblack on Mutual Benefit Societies, § 286; see also *Hollister v. Quincy Insurance Co.*, 118 Mass. 478.

Section  
40 (1).

Application for reinstatement after the alleged forfeiture does not constitute a waiver on the part of the assured of his rights as a member to notice: *Mutual Reserve Fund Life Assoc. v. Hamlin*, 20 Ins. L. Jour. 696. Under the law of New York forbidding the forfeiture of a policy for non-payment of premiums unless notice be mailed to the assured, and the premium be not paid within thirty days thereafter, the death of the assured within thirty days renders payment unnecessary before bringing suit. The relation of debtor and creditor is established between the parties, and the unpaid premium becomes a claim to be deducted from the amount under the policy: *Baxter v. Brooklyn Life Ins. Co.*, 19 Ins. Law Jour. 334. Where the certificate provided that assessments are payable within thirty days after the date of the notice, payment within such thirty days was held sufficient to keep the certificate in force though made by the beneficiary after the death of the member: *Bankers & Merchants' Mut. Life Assoc. v. Stapp*, 14 S. W. Rep. 168.

Death  
within the  
30 days.

**Section  
40 (1).**

So also *Shay v. National Benefit Society*, 7 N. Y. Supp. 287.

**Waiver of  
forfeiture.**

In *Murray v. Home Benefit Life Assoc.*, 20 Ins. L. Jour. 905, it was held that notice of subsequent assessments constituted a waiver of the preceding forfeiture. So also, *Shay v. National Benefit Society*, 7 New York Suppl. 287. But see *Mutual Protection Life Ins. Co. v. Lowry*, 84 Pa. St. 43; *Crawford Co. Mutual v. Cochran*, 88 Pa. St. 230; *Leonard v. Lebanon Co. Mutual*, 3 W. Notes of Cases, 527. Demand for and retention of dues is a waiver of non-payment of previous dues, although the society may not have been aware of such previous non-payment, *Tobin v. Western Mutual Aid Soc.*, 19 Ins. Law Jour. 849; *Dial v. Valley Mutual Life Ass.*, 18 Ins. Law Jour. 322. The member's right to reinstatement is by the present section left undisturbed. See the second proviso to the sub-section, *infra*.

In *Chicago Life, etc. v. Warner*, 80 Ill. 411, after the premium was past due, the company addressed a letter to the assured which contained the following: "The premium on your policy fell due June 28. If you wish to continue this policy in force, you will please remit above amount to this office by return mail and oblige." In an action on the policy, the Court held that this letter clearly showed that the company had not elected to forfeit the policy for failure to pay the premium when due, but that the right of forfeiture had been waived. So, also, a society is estopped from

claiming a forfeiture where it recognizes the continued existence of the certificate by notifying the member that "it is now liable to immediate suspension, unless prompt attention be given to this notice; *Olmstead v. Farmers' Mut., etc.*, 50 Mich. 200.

The promise of a society to receive past due assessments, if made without consideration and after the assessment is past due, is not binding on it. The promise to waive a right of forfeiture must either be supported by a valuable consideration, or it must be made by or on behalf of the society, while the member still has time and opportunity to make payment: *Marvin v. Universal Life, etc.*, 85 N. Y. 278; *Underwood v. Farmers, etc. Ins. Co.*, 57 N. Y. 500.

The original contract is terminated by the non-payment of an assessment of which proper notice has been given to the member. Subsequent payment and receipt therefor constitutes a new contract whose terms bind the assured whether the conditions on the receipt are read or not. If such conditions are not complied with the original certificate is not revived: *Ronald v. Mutual Reserve Fund Life Asso.*, 18 Ins. Law Jour. 733. In *Mandego v. Mutual Life Asso.*, 19 Ins. Law Jour. 660, a custom to accept drafts which, though dated prior to the day of payment, were received subsequently to such date, was held not to relieve against a forfeiture for non payment on the date when due. But in a case where a cheque was mailed within sufficient time to have reached the

Payment  
after date.

Section  
40 (1).

— company when due, but was not received, it was left to the jury to find whether or not the contract was terminated; *Kenyon v. Mutual Aid Assoc.*, 19 Ins. Law Jour. 1020.

Tender by  
assured

It is a general rule that for the purpose of avoiding penalties and forfeitures, or the loss of any right or privilege, that a tender of an assessment is the equivalent of payment. The tender need not be repeated. After the tender is made, the burden is on the society to demand the debt: *People v. Mutual Life*, 92 N. Y. 105; *Hall v. Supreme Lodge K. of H.*, 24 Fed. Rep. 450. In the absence of notice of assessment no tender of the amount of such assessment is necessary in order to prevent a forfeiture: *Covenant Benefit Asso. v. Spies, et al.*, 114 Ill. 467.

The tender must be made to the officer authorized to receive payment. Thus, where the constitution of a society provided that the financial reporter of a subordinate lodge shall receive all money due the lodge, and shall give a bond for the discharge of his duties, and authorized no other person to receive, or decline, payment of assessments, and the notice of assessment stated that assessments are to be paid to the financial reporter only, a tender of payment to the secretary, an officer not under bond, and his refusal to accept it on the ground that the member was suspended, did not bind the society, although it was customary for the secretary and other officers to receive payment of assessments: *Lazensky v. Supreme Lodge K. of H.*, 3 N. Y. Suppl. 52. Payment,

if made to an officer authorized to receive, may be made either in the lodge or on the street, any custom and usage to the contrary notwithstanding: *Manson v. Grand Lodge, etc.*, 16 N. W. Rep. 395.

Section  
40 (1).

If an expelled member, pending an appeal or legal proceedings for reinstatement, regularly tenders his dues and assessments until his death, his beneficiary, on a reversal of the judgment of the society tribunal, or upon a reinstatement by the court, will be entitled to the benefit: *Marck v. Supreme Lodge, etc.*, 29 Fed. Rep. 896. So also, in *Knights of Honor v. Wickser*, 12 S. E. Rep. 175, where the suspension was illegal, it was held that the refusal of the society to credit the assured with assessments paid thereafter, or to give to the proper officers the required notice of his death, did not prejudice the right of his beneficiaries under the certificate to recover thereon. In another case it was held that a member actually suspended by the action of his lodge is not subject to assessment until his suspension is reversed, when he becomes bound to pay all assessments levied during his suspension: *Vivar v. Supreme Lodge K. of P.* (1890), 20 Atl. Rep. 36.

Expulsion  
or suspen-  
sion of  
member.

If, however, the dues or assessments are payable at a certain fixed time, it would be the safe course for a member seeking to reverse a judgment of expulsion, or to be restored to membership, to tender the dues and assessments: cf. *Niblack on Mut. Ben. Societies*, § 305. Under the present section, if the assessments are not payable at fixed dates, notice is a condition precedent to forfeiture.



Section  
40 1.

Where the by-laws of an order provided that a default in making payment of assessments during illness would not work a forfeiture, the defendants were not allowed to forfeit a certificate for non-payment of assessments during illness: *Grand Lodge A. O. U. W. v. Brand* (1890), 46 N. W. Rep. 95.

Suspension  
lodge.

The relations which subordinate lodges bear to the supreme lodge and to the members of the society are determined by the constitution and by-laws of the society. The right of the members when the lodge is delinquent are governed by the laws of the society, but such laws are construed liberally in favour of the rights of the members: *Supreme Lodge, etc. v. Abbott*, 82 Ind. 1. When it appears that the default of the members is due to the default of the officers of the subordinate lodge, whereby the members were not notified of an assessment, the order of the supreme body suspending the subordinate lodge on the ground that the members stood suspended because of their failure to pay such assessment was held to be void: *Crowley v. Supreme Council C. B. L.* (1890), 10 N. Y. Suppl. 248.

Illegal  
assessment

Assessments are valid only when made in strict conformity with the authority contained in the charter and by-laws of the society for the purposes named therein: *Agnew v. A. O. U. W.*, 17 Mo. App. 254. In *Bagley v. A. O. U. W.*, 22 N. E. Rep. 487, it was held to be a question of law, and not a question for the jury, whether the constitution of the society was in force at a certain date and whether

certain assessments were made in accordance with such constitution. It was also held that a certified copy of the records of the grand lodge is sufficient evidence of the facts therein stated, for the purpose of a defence on the ground of non-payment of assessments, and that it was not necessary to prove the death of the member, or that such person was a member: see, also, *Williams v. German Mutual*, etc., 68 Ill. 387. Assessments improperly made are not binding: *Lamphere v. A. O. U. W.*, 47 Mich. 429. The board of directors or executive committee are the proper parties to make an assessment: *Dial v. Valley Mutual Life Assn.*, 18 Ins. Law Jour. 322. It is a general rule that when a society relies upon the failure of a member to pay an assessment as working a forfeiture of benefits, it must show affirmatively that the assessment was made by the proper authority, for a proper purpose, in the manner indicated in the source from which it derives its power to make the assessment, and in accordance with the contract. An averment that the assessment was "duly made" is insufficient: *American Mutual, etc. v. Helburn*, 2 S. W. Rep. 496; *Mutual Ins. Co. v. Houghton*, 6 Gray. 77.

In *Knight v. Supreme Council Order of C. F.*, 6 N. Y. Suppl. 427, the application of a payment by a member of an assessment illegally exacted was considered and it was held that so long as such payment remained in the hands of the society and was sufficient to meet the demand upon the member for assessments which were properly made upon

Application  
of fund.

Section  
40 (1).

him, no defence for non-payment was available to the society.

Provisos.

Provided that notice may in any case be effectually given if written or printed notice to the effect aforesaid is delivered, or by registered post prepaid is sent to the member or left at his last known place of abode by or in behalf of the society.

How  
notice may  
be served.

Notice may be given in any way the by-laws may prescribe, for the parties may agree what shall or shall not be notice. But if the society relies on a notice given in any way other than the way allowed by the proviso to be effectual, it lies upon the society to prove that the member has received the notice. For, apart from statute or express stipulation, the member is not bound in the absence of express stipulation by any notice until it is actually received by him, *Mutual Reserve Fund Assn. v. Hamlin*, 20 *Ins. Law Jour.* 696; *Castner v. Farmers' Mutual, etc.*, 50 *Mich.* 273; *Durhaus v. Corey*, 17 *Mich.* 282. It is competent for the parties to agree what shall be notice, and it is enough to conform to the agreement as contained in the contract, or by-laws, as for example, that publication in a newspaper shall be notice, *Northampton, etc., Ins. Co. v. Stewart*, 39 *N. J. L.* 486; *Wetmore v. Mutual Aid and Ben. Assoc.*, 23 *La. Ann.* 770; *Epstein v. Mutual Aid and Ben. Assoc.*, 28 *La. Ann.* 938. In case of advertising the time runs from date of last publication.

Notice by  
mail.

Apart from statute, in the absence of any stipulation regarding the method of notice mere mailing is not sufficient. It must be shown that

the notice was actually received, *McCorkle v. Texas Benevolent Assoc.*, 18 Ins. L. Jour. 31, 8 S. W. Rep. 516. Under the statute it is sufficient if the notice be sent by registered post prepaid to the member or left at his last known place of abode by or on behalf of the society. A change of residence, not made known to the society, does not effect the validity of the notice. The society has performed its duty when it has sent a notice of assessment to the address of the member, as made to it, *Lothrop v. Greenfield, etc., Ins. Co.*, 6 Allen (Mass.), 82. When notice of mailing is relied on it must be affirmatively shown that the notice was placed in the post properly directed, and stamped according to law, *Haskins v. Ky. Grangers Mutual Ben. Society*, 7 Ky. Law Rep. 371. Each member is entitled to separate notice, *Garretson v. Equitable Mutual, etc.*, 38 N. W. Rep. 127. On personal service see *Jones v. Sisson*, 6 Gray 288; *York County Mutual v. Knight*, 48 Me. 75; see also, *Frey v. Mutual Ins. Co.*, 43 U. C. R. 102.

Section  
40 (1).

# REINSTATEMENT.

Provided also that where under the rules or by-laws of the society a defaulting member is entitled to be reinstated on payment of arrears, after a stated number of days' default, this section shall not in any wise operate to prejudice the rights of such member.

The by-laws of benefit societies generally provide that a member, suspended for non-payment of an assessment, may be restored upon doing certain acts. On principle these laws receive a

Reinstatement.

Section  
40 (1).

liberal construction. Thus, where the rights of a suspended member were to be restored, upon payment of arrears, it was held that he did not have to tender the amount at a meeting of the lodge, but might pay to the proper financial officer at any place, and that no consent or action on the part of the lodge was necessary to his restoration: *Manson v. Grand Lodge, A. O. U. W.*, 16 N. W. Rep. 395; *Gaige v. Grand Lodge*, 15 N. Y. St. Rep. 455. If not stipulated for in the rule governing reinstatement, a condition in respect to good health cannot be imposed: *Ingram v. Supreme Council*, 14 N. Y. St. Rep. 600; *Van-Houten v. Pine*, 38 N. J. Eq. 72.

If the laws of the society provide that for valid reasons to the officers of the society (such as failure to receive notice of the assessment), the member may be reinstated by paying assessment arrearages, the contract, it was held, has conditional life after the expiration of the days of grace for paying the assessment until it shall be ascertained whether the assured had sufficient excuse for the failure to pay. The decision of the officers on the validity of the excuse may be reversed in the courts: *Dennis v. Massachusetts Benefit Assn.*, 19 Ins. L. Jour. 811, 31 N. Y. St. Rep. 652.

A condition requiring a certificate of health prior to reinstatement is waived by a request to pay an overdue assessment, coupled with an assurance that if paid the membership will be continued: *True v. Bankers' Life Association*, 20 Ins.

L. Jour. 197; see also Millard v. Supreme Council Section 40 (1), (2).  
American Legion of Honor, 22 Pac. Reporter, 864.

(2) When the benefit of the contract is stipulated to be suspended or reduced or forfeited for any other reason than for non-payment of premium moneys, or money in the nature thereof, no such additional condition suspending, reducing or forfeiting the benefit shall be valid, unless it is held by the court or judge before whom a question relating to the contract is tried, to be just and reasonable under all the circumstances of the case, such decision to be subject to review or appeal. Conditions of forfeiture to be just and reasonable

The decision of the society tribunal may, under this sub-section, be reversed, if the decision of such tribunal affects the rights of the member under an insurance contract of the society.

It has been held in many cases that before the member can resort to the courts he must exhaust the remedies provided by the society of which he is a member: Field v. The Court Hope Lodge of A. O. F., 26 Gr. 467; Carlen v. Drury, 1 Ves. and B. 154; Karcher v. Supreme Lodge, etc., 137 Mass. 368; Dolan v. Court Good Samaritan, 128 Mass. 437. Where contractual rights are involved a different rule prevails. The courts do not favour such a construction of the powers of a society whereby societies doing a life insurance business can expel a member for some infraction of a by-law regulating personal conduct and thereby cause him to forfeit his insurance: see Otto v. Journeymen Tailors' P. and B. Union of San Francisco, 17 Pac. Rep. 217; Austin v. Searing, 16 N. Y. 112; Sauer v. Sampson Lodge, 102 Ind. 262; Mulroy v. Knights of Honor, 28 Mo. App. 463.

Section  
40 (2).Illegal ex-  
pulsion.

In Supreme Lodge A. O. U. W. *et al.* v. Zalk: Ill. App. Ct., 10 Legal Adviser, 84, the rule was laid down that expulsion without notice to, or appearance by, the member is void. If the expulsion was illegal, it is no defence to an action brought by the member to recover benefits that the plaintiff was in arrears for dues, if it appear that the plaintiff had paid his dues up to the time of his expulsion, and that all subsequent dues were tendered: Simmons v. The Syracuse, etc., Society, (N. Y. S. C.), 92 N. Y. State Rep. 428.

Remedy by  
mandamus

In case of illegal disfranchisement of a member of an incorporated society, mandamus is the proper remedy for his restoration: Commonwealth v. Mayor, 5 Watts, 152; People v. Benevolent Society, 3 Hun. 361; People v. Medical Society, 24 Barb. 570; State v. Chamber of Commerce, 20 Wis. 63.

On "just and reasonable," compare R. S. O. 1887, c. 167, s. 117; see also, note under section 36, *supra*.

Provided that in any contract of which total abstinence from intoxicating liquors is made an express condition, such condition shall be deemed to be just and reasonable.

In Van Valkenburg v. American Popular Co., 70 N. Y. 605, it was held that a statement by assured that he never *uses* intoxicating liquors is not falsified by proof of a single or incidental use, the expression having reference to a customary or habitual use; see also Moore v. The Connecticut Mutual Life Ins. Co., 6 S. C. R. at 697; Ætna Life Ins. Co. v. Hanna, 20 Ins. Law Jour. 977.

## AMOUNT PAYABLE UNDER CONTRACT.

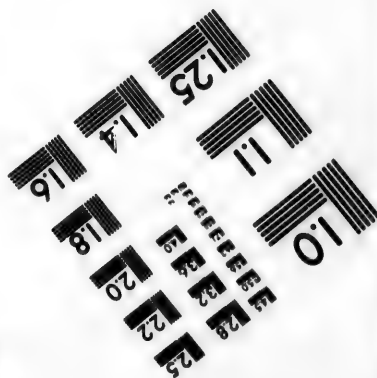
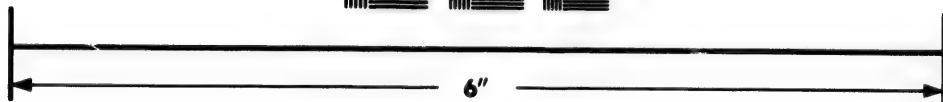
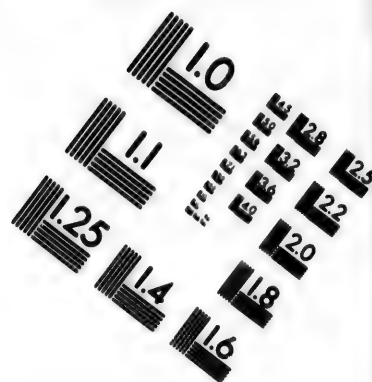
41. (1) Where the event has happened on the occurrence of which any benefit or insurance money is payable under the contract, but the amount payable is matter of dispute, the amount payable by the friendly society to the beneficiary shall *prima facie* be the maximum amount stated or indicated in the contract, and it shall lie on the society to prove the contrary.

On the maturity, see section 2 (15) *supra*, of an insurance contract of a friendly society, the amount payable by the society to the beneficiary is *prima facie* the maximum amount stated or indicated in the contract. "Maximum" means the largest sum which, under the contract, the benefit may reach but may not, in any event, exceed: section 2 (11) *supra*.

Apart from this enactment, it has been repeatedly held in the United States courts that where the certificate stipulates for the payment of a sum with the proviso, that in case the result of an assessment failed to realize the face value, the beneficiary should accept such result as payment in full, the burden of proof that the face value was not realized is upon the society; held, also, the certificate is sufficient to support a judgment for the sum named therein: Metropolitan Safety Fund Assoc. v. Windover, 20 Ins. Law Jour. 1004; La Manna v. National Security Life & Accident Co., (N. Y. S. C.) 32 N. Y. State Rep. 347; Lawler v. Murphy *et al.*, (Conn. S. C.) 8 Lawyers' Rep. Ann. 113. But where it appears from the evidence that a less sum was realized, judgment is given for such sum only.







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Section  
41(1).Separate  
assess-  
ments.

Where the policy of an assessment company provides that the beneficiary shall receive not exceeding \$3,000, provided the assessments on the policies in force at the time of death amount to that sum, it was held in an action brought to compel an assessment that the policy was entitled to the proceeds of a separate assessment. It was not sufficient that a round sum was assessed on the occasion of nine policies becoming claims, and that the proceeds were distributed *pro rata* among the beneficiaries under the nine: Kentucky Mutual Security Fund Co. v. Turner, 19 Ins. L. Jour. 565. On the other hand, when the by-laws stipulate that members shall be subject only to one assessment for each death claim, and an assessment is made, but the claim is not paid in full, the members are not subject to a second assessment whether the amount realized was sufficient or not. People *ex rel.* Meyers v. Masonic Guild & Mut. Ben. Assoc., 20 Ins. Law Jour. 858. When the society refuses to make an assessment in a proper case, the remedy is by an action for the breach of contract: Bentz v. Northwestern Aid Assoc., 19 Ins. Law Jour. 142.

Computa-  
tion of  
amount.

The amount which would have been realized by an assessment according to the terms of the certificate may be ascertained by a computation based on the official statement made by the company and filed in the Insurance Department: O'Brien v. Home Ben. Society, (N. Y. S. C.) 4 N. Y. Suppl. 275. The plaintiff may have an order for the examination of the officers of the association to

ascertain what an assessment would realize: Section 41 (1).  
*Chaffey v. Equitable Reserve Fund Life Assoc.*,  
 (N. Y. S. C.) 2 N. Y. Suppl. 481. When, by the  
 contract, the society undertakes to pay "an  
 amount equal to \$1.50 for each certificate in force  
 at the time such amount shall become due, but not  
 to exceed \$4,000," the society is bound to pay  
 \$1.50 for each certificate in force, and not merely  
 the amount which it has been able to collect: *Kerr*  
*v. Minnesota Mutual Benefit Assoc.*, 18 Ins. L. J.  
 546; *Supreme Commandery of the Knights of the*  
*Golden Rule v. Barrett*, (Ky. S. C.) 12 Ky. Law  
 Rep. 94.

But where the certificate indicates a particular Claim on particular fund.  
 fund whereout the amount is to be paid to the  
 beneficiary, the beneficiary has no right of recourse  
 to any other fund or to the assets generally of the  
 association; his right of recovery is limited to the  
 amount in that fund and which could be brought  
 into it by proper assessments according to the plan  
 of the association: *Hesinger v. Home Benefit*  
*Assoc.*, (Min. S. C.) 43 North West Rep. 481. The  
 limitation of the member's right must appear by  
 the certificate; it is not sufficient that an amend-  
 ment is made in the by-laws of the society: *Old*  
*Wayne Mutual Life Assoc. v. Nordby*, 19 Ins. Law  
 Jour. 793. If the particular fund is insufficient, it  
 is the duty of the society to levy an assessment:  
*Darrow v. the Family Fund Society*, 19 Ins. Law  
 Jour. 554.

If the society offers the claimant under a con- Claimant's right to inspect books.  
 tract a less sum than the maximum named in the

**Section  
41 (1).**

contract and either offers no explanation, or alleges as a reason for not paying the maximum, that the society's general fund, or some other fund, is insufficient, the claimant is, on written notice to the society, entitled as of right to inspect personally or by agent, all books and documents relating to the contract funds generally, or the fund alleged to be insufficient: section 46 (1), *infra*. On the society refusing or neglecting to afford him a reasonable opportunity of inspection the claimant can obtain from the Registrar an order to inspect on a day named. After such order has been granted neglect or refusal to afford him an opportunity of inspection is an offence punishable on summary conviction by imprisonment: section 46 (2), *infra*.

**Claim  
when  
payable.**

Every claim under any insurance contract of a friendly society is legally payable on the expiration of sixty days after reasonably sufficient proof has been furnished to the society of the happening of the event on which such claim was by the contract, to accrue. The society in its discretion may pay the claim at any time before the expiration of the sixty days: section 42 *infra*.

**Policies of  
corpora-  
tions  
licensed  
under  
R. S. C. c.  
124, s. 39.**

(2) Where a corporation licensed or authorized under section 39 of *The Insurance Act* of Canada is registered under this Act, every policy and certificate issued and used in Ontario shall conform and be subject to the provisions of the said section; and upon any contravention of the said section the corporation shall be liable to have its registry under this Act suspended or cancelled.

The following is the text of section 39 of *The Insurance Act* of Canada, R. S. C. c. 124. Any contravention of the section renders the corporation liable to suspension or cancellation of registry: cf. section 6 (2) *supra*:—

Section  
41 (2).

“39. The provisions of this section shall apply to corporations or associations incorporated or legally formed elsewhere than in Canada for the purpose of carrying on the business of life insurance upon the co-operative or assessment plan:

R. S. C. c.  
124, s. 39.

“2. Any such corporation or association may be licensed by the Minister under the provisions of this Act, to transact business in Canada upon depositing with him fifty thousand dollars, and thereafter shall have the right to transact business so long as it continues to pay its losses to the full limit named in its certificates or policies, and has complied with all the requirements of this Act and of the Superintendent of Insurance;

“3. In addition to such deposit of fifty thousand dollars, the Minister, upon the report of the Superintendent, approved by the Treasury Board, may, from time to time, require such other and further deposit as is recommended in such report and so approved, to be made by such companies or deposited with trustees to be named by the Minister upon such trusts as are determined by the Governor in Council;

“4. Death claims shall be a first charge on all moneys realized from assessments, and no deduction shall be made from any such death claims on any account whatsoever;

Section  
41 (2).

"5. No portion of any moneys received from assessments for death claims shall be used for any expense whatever: and every notice of any assessments shall truly specify the cause and purpose thereof;

"6. Every application, policy and certificate issued or used by any such company in Canada, shall have printed thereon, in a conspicuous place, in ink of a color different from that of the ink in the instrument, and in good sized type, the following words:

" 'This association is not required by law to maintain the reserve which is required of ordinary life insurance companies.'

"7. Every certificate and policy shall contain a promise to pay the whole amount therein mentioned out of the death fund of the association and out of any moneys realized from assessments to be made for that purpose, and every such association shall be bound, forthwith, and from time to time to make assessments to an amount adequate with its other available funds to pay all obligations created under any such certificate or policy without deduction or abatement;

"8. The condition embodied in the next preceding sub-section shall be inserted in every policy or certificate issued or delivered by any such company to any person insured in Canada;

"9. In every policy issued by a company licensed in accordance with this section of this Act in favor of a resident of Canada, a clause shall be either



embodied therein or endorsed thereon, to the effect that an action to enforce the obligation of such policy may be validly taken in any court of competent jurisdiction in the Province wherein the policy-holder resides or last resided before his decease, and such policy shall not contain any provision inconsistent with such clause, 49 V. c. 45, s. 39." Sections  
41 (2), 42.

**42.** Every claim under a contract within the meaning of section 2 hereof accruing to a member of a friendly society, or to his executors, administrators or assigns, or to his nominees, where by the rules of the society nomination is permitted, shall become legally payable on the expiration of sixty days after reasonably sufficient proof has been furnished to the society of the happening of the event on which such claim was, by said contract, to accrue, and any rules or by-laws of the society to the contrary shall be void ; but the society may, in its discretion, pay the claim at any time before the expiration of the sixty days. Claims  
when  
payable.

Cf. Statutory Condition 17 of fire policies.  
R. S. O. 1887, c. 167, s. 114, Appendix A.

A benefit under an insurance contract of a friendly society is legally payable, any rule or by-law to the contrary notwithstanding, on the expiration of sixty days after reasonably sufficient proof has been furnished to the society of the happening of the event on which such benefit was by said contract to accrue: cf. definition of "maturity" of an insurance contract, section 2 (15), *supra*.

Where a thing is to be done after so many days the first day is to be excluded: *Dickson v. Scott*, 1 P. R. 366; *Montgomery v. Brown*, 2 L. J. N. S.

Section  
42.

72. So, *Commercial Bank v. Ives*, 2 Hill. 335, if a thing is to be done after 30 days it cannot be done until after the 31st day: see, also, *Judd v. Fulton*, 10 Barb. 117. A writ of summons is not a judicial act or proceeding, therefore, if the cause of action arose before the hour of issuing the writ, the action is not premature: *Clarke v. Bradlaugh*, L. R. 8 Q. B. D. 63; *Campbell v. Strangeways*, L. R. 3 C. P. D. 105. Repudiation by the company of liability under the contract does not entitle the assured to commence his action before the expiration of the time allowed by the statute for payment: *Mutual Fire Ins. Co. of Co. of Wellington v. Frey*, 5 S. C. R. 8; *Cameron v. Monarch*, 7 U. C. C. P. 212; *Rice v. Provincial*, 7 U. C. C. P. 548; *contra*, *California Ins. Co. v. Gracey*, 20 Ins. Law Jour. 28; *Cascade Fire and Marine Ins. Co. v. Journal Publishing Co.*, 20 Ins. Law Jour. 395. The proof required is such reasonable proof as will give assurance that the event has happened, and such as will satisfy the rules of evidence. What is due proof cannot be determined arbitrarily by the company, as, for instance, that a physician's certificate shall be deemed an essential part of the proof: *Taylor v. Ætna Life Ins. Co.*, 13 Gray. 434; *O'Reilly v. Guardian Mutual Life Ins. Co.*, 60 N. Y. 169. The information is the main thing to be regarded in proofs of loss, the form is not important: *Irwin v. Springfield, etc., Ins. Co.*, 24 Mo. App. 145. Notice of loss and particulars of it may be waived by the insurer expressly, or by conduct in dealing with the assured: *Lampkin v. Ont. M. & F. Ins. Co.*, 12 U. C. R. at 584.

Delivery of proof of loss and particulars of loss to the local agent is sufficient delivery: *Peppit v. North British and Mercantile*, 1 Russ. & Geld., (Nov. Sc.) 219; *German Ins. Co. v. Ward*, 90 Ill. 550. If the company, when notified of the death and requested to furnish blank proofs of loss, refuses to do so on the ground that the policy is void, or that it is not liable for the loss, such conduct will be held a waiver of proofs and they need not be supplied: *Grattan v. Metropolitan L. Ins. Co.*, 80 N. Y. 281; *Payne v. Mutual Relief Society*, 6 N. Y. St. Rep. 365. If the delay in furnishing proofs of loss, or giving notice is in any way attributable to the insurer, or caused by him, the delay will not be regarded: *Little v. Phoenix Ins. Co.*, 123 Mass. 380; *O'Brien v. Ohio Ins. Co.*, 52 Mich. 131. Thus, in *Supreme Sitting Order of the Iron Hall v. Steen*, 22 North East. Rep. 136, where the proper officer refused to certify to his sickness. If no proofs of loss are furnished the liability of the insurer does not attach unless proof has been waived: *Leadbitter v. Aetna Ins. Co.*, 13 Me. 265; *Davis v. Davis*, 49 Me. 282. Where defects are found in proofs of loss, capable of being remedied, if intelligibly pointed out, failure on the part of the insurer to make known to the claimant the defect within a reasonable time, is deemed to be a waiver: *Mercantile Insurance Co. v. Holthaus*, 43 Mich. 423; *Titus v. Glens Falls Ins. Co.*, 81 N. Y. 410; *Timayenis v. Union Mut. L. Ins. Co.*, 21 Fed. Rep. 223. What is a reasonable time is a question for the jury: *Fire Insurance Companies v. Felrath*, 77 Ala. 201.

**Sections  
42-43.**

The society may pay the claim at any time before the expiration of the sixty days. Apart from the statute, it has been held that a provision postponing the time for payment is simply for the benefit of the insurer. Thus, after notice, the insurer is not bound to wait the whole of the specified time before making payment, in order to give possible claimants opportunity to make known their claims: *Home Mutual Assn. v. Seager*, 128 Pa. St. 533. On the other hand, waiver of proof does not create a liability to pay prior to the expiration of the specified time: *McConnell v. Iowa Mutual Aid Assn.*, 79 Iowa, 757.

#### NOTICES TO CORPORATIONS.

**Service of  
papers.**

**43.** Delivery of any written notice to any insurance corporation for any purpose of this Act, where the mode thereof is not otherwise expressly provided, may be by letter delivered at the chief office of the corporation in Ontario, or by registered post letter addressed to the corporation, its manager, or agent at such chief office, or by such written notice given in any other manner to an authorized agent of the corporation.

Compare Statutory Condition 23 (R. S. O. 1887, c. 167, s. 114):—

**R. S. O.  
1887, c. 167,  
s. 114.**

"Any written notice to a company for any purpose of the statutory conditions, when the mode thereof is not expressly provided, may be by letter delivered at the head office of the company in Ontario, or by registered post letter addressed to the company, its manager or agent, at such head office, or by such written notice, given in any other manner to an authorized agent of the company."

For notice and evidence of mailing of notice, see *Union Fire Insurance Co. v. Fitzsimmons*, 32 U. C. C. P. 602; *Union Fire Insurance Co. v. O'Gara*, 4 O. R. 359. Sections 43, 44 (1)

#### DEFAULT IN PAYMENT OF CLAIM.

44. (1) Any insurance corporation shall be liable to have its registry suspended by the Registry Officer upon the failure of the corporation to pay an undisputed claim, on an insurance contract for the space of sixty days after being legally payable, or if disputed, after final judgment and tender of a legal valid discharge, and (in either case) after notice supported by affidavit of the society's default delivered to the Registry Officer. Registry suspended for insolvency.

A company licensed by the Province of Ontario is liable to have its deposit with the Provincial Treasury administered upon failure to pay an undisputed claim, arising under an insurance contract, for the space of sixty days after being due; or, if disputed, after final judgment and tender of a legal valid discharge, and (in either case) after notice thereof to the Provincial Treasurer and to the Inspector of Insurance: *Ontario Insurance Act*, s. 48 (1). By *The Insurance Act* of Canada, s. 45, when notice has been served on the Minister of any undisputed claim arising from loss insured against in Canada remaining unpaid for the space of sixty days after it becomes due, or of a disputed claim remaining unpaid after final judgment in regular course of law and tender of legal valid discharge, the license of such company may be withdrawn by the Minister: cf. *The Winding-up Act*, s. 6. R. S. O. 1887, c. 107, s. 48 (1).  
R. S. C. c. 124, s. 45.  
R. S. C. c. 129, s. 6.

**Section**  
**44 (1)-(3).**

Default in terms of this section renders the corporation liable to suspension of registry. If within sixty days after suspension of registry the corporation has fully paid all undisputed claims and final judgments, the registry may be revived: sub-section 2 of this section, *infra*. But, if the default has continued for sixty days after suspension of registry, the registry is cancelled: sub-section 3 of this section, *infra*.

Where  
corpora-  
tion  
resumes  
payment.

(2) Where the registry of a corporation has been suspended under the preceding sub-section, but the corporation has within sixty days after the notice therein provided has fully paid all undisputed claims and final judgments upon or against the corporation, the Registry Officer, upon proof of the facts, may revive the registry of the corporation and issue his certificate of such revivor.

R. S. C. c.  
124, s. 46.

Compare section 46 of *The Insurance Act* of Canada:—"Such license may be renewed, and the company may again transact business, if, within sixty days after notice to the Minister of the failure of the company to pay any undisputed claim, or the amount of any final judgment as provided in the next preceding section, undisputed claims or final judgments upon or against the company in Canada are paid and satisfied."

Continued  
default for  
further 60  
days.

(3) If within the sixty days mentioned in the next preceding sub-section, the corporation has not fully paid all undisputed claims and final judgments, the Registry Officer, upon proof of the fact, shall cancel the registry of the corporation.

After the registry of any corporation has been cancelled the corporation is deemed to be unregistered; section 2 (6), *supra*. If the corporation

whose registry is cancelled was incorporated by or by virtue of a statute of Ontario, it is placed in the hands of a receiver in the manner provided in section 53, *et seq.*, *infra*. An appeal lies from the decision of the Registry Officer cancelling the registry of a corporation: section 51, *infra*.

Sections  
44 (3)-(4), 45

(4) If the enactment under or by virtue of which the corporation was incorporated, or by which the contracts of the corporation are regulated, prescribes payment of undisputed claims or final judgments within less than sixty days, this section shall not be deemed to extend the time so prescribed for payment, nor to extend the right of the corporation to revivor of registry hereunder beyond the time limited by the said enactment.

Where  
time of  
default  
limited by  
other  
enactment.

By Statutory Condition 17 (*vide* Appendix A), relating to all contracts of fire insurance undertaken in Ontario. "The loss shall not be payable until \_\_\_\_\_ days after completion of the proofs of loss, unless otherwise provided for by the contract of insurance.

R. S. C. 1887  
c. 107, s. 114.

"(a) The blank shall be filled in the case of mutual and cash mutual companies with the word 'sixty,' and in the case of other companies with the word 'thirty.' "

The times within which payments of undisputed claims must be made under the above Condition are not extended by virtue of this section.

#### REGISTRAR AND BOOKS OF SOCIETY.

**45.** The Registrar, or any person authorized under his hand and seal, shall have at any time within reasonable business hours of every day, except Sundays and holidays, access to all such books, securities and documents of a friendly society as

Registrar  
to have  
access to  
society's  
books, etc.



**Section  
45.**

relate to the society's contracts; and any officer or person in charge, possession, custody or control of such books, securities or papers, refusing or neglecting to afford such access, shall be guilty of an offence, punishable as for an offence against sub-section 5 of section 30, all the provisions of which sub-section shall equally apply in the case of an offence against this section; and, if registered, the society shall be liable to have its registry suspended; and on continued refusal or neglect to afford such access, shall be liable to have its registry cancelled.

R. S. O.  
1887, c. 107,  
ss. 140, 141.

Compare sections 140 and 141 of *The Ontario Insurance Act*.

Person  
authorized  
by regis-  
trar.

The special auditor under section 30, *supra*, is sufficiently accredited by a writing under the hand and seal of the Registrar, to the effect that the Registrar has nominated him to audit the books and accounts of the society.

The claimant under an insurance contract of a friendly society, or his agent, may, under section 46, *infra*, obtain an order to inspect all books and documents of the society relating to the contract funds generally, or the particular fund alleged to be insufficient.

Refusal of  
access an  
offence.

Any officer of the society or person in charge of such books or documents refusing or neglecting to afford access to the Registrar, or to any person authorized by the Registrar, is guilty of an offence; upon summary conviction thereof before any police magistrate or justice of the peace having jurisdiction where the offence was committed, he shall be imprisoned in the Central Prison, or in any gaol of the Province, with or without hard labour, for a period not exceeding twelve months: section 30 (5) *supra*.



The society is also liable, if registered, to suspension of registry; and on continued refusal or neglect to afford such access the society is liable to have its registration cancelled.

Sections  
45, 46 (1-2).

**46.** (1) If, when a claim accrues under a contract, a friendly society offers the claimant a less sum than the maximum named in the contract, and either offers no explanation, or alleges as a reason for not paying the maximum, that the society's general contract fund, or some other fund, is insufficient, the claimant shall, on written notice to the society, be entitled as of right, to inspect, personally, or by agent, all books and documents relating to the contract funds generally, or the fund alleged to be insufficient.

Where maximum not paid claimant entitled to inspect society's books.

Section 41 *supra* enacts that the maximum named in the contract shall *prima facie* be payable to the beneficiary on the happening of the event on the occurrence of which the benefit is payable under the contract. "Maximum" means the largest sum which, under the contract, the benefit may reach, but may not in any event exceed: section 2 (11), *supra*.

If, after written notice to the society of his intention to inspect the books and documents relating to the contract fund, the society refuses or neglects to afford him an opportunity for such inspection, the claimant may proceed as in the next sub-section provided.

On refusal to allow him to inspect.

(2) If the society refuses or neglects to afford the claimant a reasonable opportunity of inspection as in the last sub-section provided, the claimant may file with the Registrar, an affidavit to the effect that he rightfully claims under a certain contract of the society, giving particulars sufficient to identify the contract, and that the society has refused or neglected to afford him

Claimant may have order from Registrar to inspect.

**Section  
46 (2).**

opportunity of inspection as aforesaid, thereupon the Registrar may, under his hand and seal, give the claimant or his agent an order to inspect on a day named; and neglect or refusal thereafter to afford him an opportunity of inspection, shall be an offence, punishable as for an offence or offences committed against sub-sections 5 and 6 of section 30, all the provisions of which sub-sections shall equally apply in the case of an offence against this section.

**Contents  
of affidavit.**

The affidavit should set out: (a) that he rightfully claims under a certain contract (identifying it) of the society; (b) that the society has offered him a less sum than the maximum named in the contract, and has either offered no explanation, or has alleged as a reason for not paying the maximum, that the society's general contract fund, or some other fund is insufficient (*as the case may be*); (c) that he gave written notice to the society of his intention to inspect the books and documents relating to the contract funds generally, or the fund alleged to be insufficient (*as the case may be*), and (d) that the society refused or neglected to afford him an opportunity of inspection (*giving particulars of the refusal or neglect*). The affidavit may be sworn to before any Justice of the Peace, Notary Public or Commissioner of the High Court for taking affidavits: section 47 (2), *infra*.

**Refusal  
after  
Registrar's  
order.**

Any officer of the society, or person in charge of the books or documents relating to the contract funds, or of the particular fund alleged to be insufficient, refusing or neglecting to afford the claimant or his agent, an opportunity for inspection according to the terms of the Registrar's order, is guilty of an offence, and is liable upon summary conviction.

tion to imprisonment with or without hard labour Sections 46 (2), 47 (1) for a period not exceeding twelve months: *vide* section 30 (5), *supra*.

A society which, by its officers, refuses or neglects to afford a claimant an opportunity to inspect upon the order of the Registrar is liable to have its registry suspended or cancelled: *vide* section 30 (6), *supra*.

## ANNUAL\* STATEMENTS.

47. (1) It shall be the duty of the presiding officer, the secretary and the treasurer, of every registered friendly society within the intent of section 8 or of section 10 to prepare annually, on the first day of January, or within two months thereafter, according to a printed form, to be supplied on application to the Registrar, a statement of the financial condition and affairs of the society for the purposes of this Act, and having signed and verified under oath, to file the said statement in the office of the Registrar on or before the first day of March then next ensuing; and any society refusing or neglecting to file its statement or to make prompt and explicit answer to any inquiries at any time put by the Registrar touching the society's contracts or finances shall be liable to suspension or cancellation of registry. Annual statement to the Registrar. See page 379. Refusal of information.

Cf. 38 & 39 Vic. c. 60 (Imp.) s. 14 sub-sec. 1 (d); sub-secs. 3, 4, 5; *Ontario Insurance Act*, ss. 103, 104. as to Trade Unions, see R. S. C. c. 131, s. 17.

Every registered friendly society is required by section 29, *supra*, to have at least once in every year a *bona fide* and business-like audit made of its books of record and account by two auditors; the summary statement showing as the result of such All societies to file summary statement of auditors.

**Section  
47 (1).**

audit, the society's actual assets, liabilities, receipts and expenditures and the state of the insurance fund or funds, signed and certified by the two auditors must be filed in the office of the Registrar with the annual statement required by this section.

Certain  
societies to  
make  
annual  
return.

In addition to the summary statement required of all registered societies, certain societies are further required to file in the office of the Registrar annually on or before the 1st day of March a statement, on the form supplied by the Department, of the financial condition and affairs of the society for the purposes of this Act. These societies are: (a) Friendly societies incorporated under R. S. O. 1877, c. 167, or any of the Acts consolidated thereby, or under R. S. O. 1877, c. 172, (or any of the Acts consolidated thereby), prior to the 10th day of March, 1890; (b) Friendly societies incorporated elsewhere than in Ontario, and admitted to registry on the Friendly Society Register, not being within section 9, *supra*, societies empowered by virtue of Acts of the Parliament of Canada to undertake insurance contracts.

Contents  
and form  
of state-  
ment.

The statement must be prepared according to the printed form from time to time adopted by the Department. The statement is of the financial condition and affairs of the society for the purposes of this Act, and deals only with the insurance funds of the society, if the insurance funds are kept in a distinct and separate fund from other moneys of the society. "Insurance fund" includes all moneys, securities for money, and assets appropri-

ated by the constitution, by-laws or rules of the society to the payment of insurance liabilities, or appropriated for the management of the insurance branch, or department, or division of the society, or otherwise legally available for insurance liabilities: section 2 (13) *supra*. A friendly society may include in its annual statement to the Registrar a valuation, made by a competent actuary and verified by his oath, of any or all of the contingent liabilities of the society: section 22 (1) *supra*. The annual statement must be signed and verified under oath by the presiding officer, the secretary and the treasurer.

Section  
47 (1).

If the annual statement of the society be not filed according to the terms of this section, the society is liable to have its registry suspended or cancelled. The society's right to a certificate of renewal registry is, by section 20, *supra*, made to depend upon compliance with the provisions of this section as to the annual statement. If the society loses its registry by suspension, cancellation or non-renewal, it becomes an unregistered society: section 2 (6) *supra*, and therefore within the prohibition of section 27, *supra*.

Effect of  
non-com-  
pliance

It is the duty of the society to make prompt and explicit answer to any inquiries at any time put by the Registrar touching the contracts or finances of the society. Neglect or refusal to answer such enquiries renders the society liable to suspension or cancellation of registry: cf. R. S. O. 1887, c. 167, s. 103 (3).

Questions  
by Regis-  
trar.

**Sections**  
**48 (2)-(3), 49**

Who may  
 administer  
 oaths  
 under the  
 Act.

(2) The statement required by the preceding sub-section may be sworn to before any Justice of the Peace, Notary Public or Commissioner of the High Court for taking affidavits, and every such person is hereby authorized to administer any oath required under this Act, except where otherwise expressly provided.

Copy of  
 summary  
 statement  
 to be filed.

(3) Together with the statement mentioned in sub-section 1 of this section the society shall file in the office of the Registrar a certified copy of the summary statement required by sub-section 1 of section 29.

For the form and contents of the summary statement of the result of the annual audit, see under section 29 (1), *supra*.

Registrar's  
 annual  
 return.

**48.** From the statements filed in his office, as aforesaid, the Registrar shall cause to be prepared, printed and distributed, a report, which may be known as the Friendly Societies' Statements, for the year ending 31st December—(*naming the year*), and such report shall include a list of registered societies brought up to its actual date of publication.

It is enacted by section 22, sub-section 1, *supra*, that the printing of a society's annual statement in the Registrar's report shall not operate, or be in any way construed as a warranty of the financial basis or for the actual or actuarial solvency or standing of any society. A friendly society may, however, include in its annual statement to the Registrar a valuation, made by a competent actuary, and verified by his oath, of any or all of the contingent liabilities of the society; and the Registrar may in his annual report publish an abstract of such valuation as part of the society's statement.

SUSPENSION OR CANCELLATION OF REGISTRY.

**49.** (1) The happening of any of the following events shall *ipso facto*, and without notice from the Registry Officer cancel the registry of the corporation concerned:—

Certain events to cancel registry.

- (a) The repeal or the expiry without renewal of its charter, instrument of association, or deed of settlement, or of its act or acts of incorporation; or

In England a charter may be obtained from the Crown on petition to the Queen in Council; when once obtained, the corporation can not be dissolved by exercise of the Royal Prerogative: 2 Kyd. 447; *Lea v. American*, etc. Canal, 3 Abb. Pr. N. S. 10. But a charter which has been obtained from the Crown by false and fraudulent statements may be formally annulled by *scire facias*. *R. v. The Eastern Archipelago Co.*, 1 E. & B. 310; 2 E. & B. 856, and 4 DeG. M. & G. 199. A company which is incorporated by charter may be dissolved by a formal surrender or cancellation of its charter and in such other way, if any, as is pointed out therein.

Repeal of charter or act of incorporation.

A company which is incorporated by Act of Parliament can be dissolved only as therein provided, or by another Act of Parliament: *Lindley Law of Companies*, 5th ed. 610.

There are two cases in which a corporation is dissolved by effluxion of time. *First*, if the corporation was chartered to exist during a limited period of time, or until a certain day, its existence will cease upon the expiration of the time or the

Expiry of charter, etc.



**Section  
49 (1).**

occurrence of the day prescribed by the charter: *People v. Walker*, 17 N. Y. 502; Morawetz Law of Private Corporations, 2nd ed. § 1005. *Second*, if the charter contains a proviso that, unless the company shall go into actual operation within a specified time, its corporate existence and powers shall cease, the corporation will lose its franchise if it does not go into actual operation within the time specified, and no judgment of forfeiture is necessary: Morawetz Law of Private Corporations, § 1006.

**Under  
Ont. Ins. Act**

The corporate powers of an insurance company incorporated under *The Ontario Insurance Act* or under any special Act of the Legislature of Ontario are forfeited by non-user during three years after the date of its incorporation; or by discontinuance of business for one year; or by suspension of its license for one year; or, if the license is cancelled otherwise than by effluxion of time and is not renewed within the time prescribed by section 46 of *The Ontario Insurance Act*, R. S. O. 1887, c. 167, s. 7; compare R. S. O. 1887, c. 157, s. 70.

**Under  
Ins. Act.  
of Canada.**

Similarly Acts of the Parliament of Canada incorporating insurance companies expire at the end of two years from the passing thereof, unless the company obtains a license from the Minister under the provisions of *The Insurance Act*, R. S. C. c. 124, s. 24; compare R. S. C. c. 119, s. 83.

**Under  
Benevolent  
Societies'  
Act.**

If a body incorporated under R. S. O. 1887, c. 172, does not go into actual operation within two years after incorporation, or, for two consecutive years, does not use its corporate powers



for the purpose or for the chief purpose set forth in its declaration, such non-user *ipso facto* works a forfeiture of the corporate powers: R. S. O. 1887, c. 172, s. 1, as amended by 53 Vic. c. 39 (Ont.), s. 9, and by *The Insurance Corporations Act*, 1892, s. 63 (1), *infra*.

(b) The revocation of its corporate powers ; or

By 53 Vic. c. 39 (Ont.), s. 10, the corporate powers of a body incorporated under R. S. O. 1887, c. 172, may be revoked, or suspended for a limited period, by the Lieutenant-Governor in Council if the body has used its corporate powers for a fraudulent or other unlawful purpose.

The case provided for in this and the preceding clause of this sub-section is the destruction of the corporation itself either by repeal, expiry or revocation. In the next clause the case provided for is the loss of the particular franchise of the corporation, whereby it had authority to transact the business of insurance.

(c) The cancellation, or the expiry without renewal of the license or other document of authority by which the corporation was authorized to exercise its corporate powers for the transaction of insurance ; or

To the same effect is sub-section 2 of section 19, *supra*.

For cancellation or expiry of the license issued, under *The Ontario Insurance Act*, see R. S. O. 1887, c. 167, ss. 44, 46, 57, 104, 143; under *The*

Section  
49 (1).

*Insurance Act of Canada*, see R. S. C. c. 124, ss. 5, 8 (3), 9, 10, 21 (2), 25 (8), 38 (2), 39 (2), 45.

(d) The passing of a resolution by the corporation for its winding up; or

For voluntary liquidation of Ontario corporations see R. S. O. 1887, c. 183; also, *The Ontario Insurance Act*, ss. 151 *et seq.*; under *The Winding-up Act of Canada*, see R. S. C. c. 129 as amended by 52 Vic. c. 32 (D.)

(e) The making of an order by any court for the winding-up of the corporation:

For winding up under an order of the court: see *Dominion Winding-up Act* as amended by 52 Vic. c. 32 (D.); cf. R. S. O. 1887, c. 183.

In *Douglas v. Atlantic Mutual, etc. of Albany*, 28 Gr. 379, it was held that a company incorporated in the State of New York and carrying on business in Ontario, cannot be allowed to do so after proceedings have been taken, according to the law of its domicile with a view of winding up the affairs of the company, and that irrespective of what the result of the proceedings may be as to solvency or insolvency of the company.

And upon proof that any of the said events has happened, the Registry Officer, after notice to the corporation in cases where any dispute is likely to arise, shall cause the proper entry to be made upon the register.

The happening of any of the said events *ipso facto* cancels the registry of the corporation, without notice from the Registry Officer, although no

entry of such cancellation may appear upon the register. An entry on the register is made by the Registry Officer upon proof that such event has happened. In a doubtful case no entry is made until after notice to the corporation concerned. If a written notice disputing that such event has happened is delivered on behalf of the corporation to the Registry Officer, the Registry Officer decides both as to the law and the facts, but an appeal lies from his decision: sub-section 3, *infra*. Compare, *re* Outlay Assurance Society, L. R. 34 Ch. D. 479.

Section  
49 (1)-(3).

(2) The happening of any of the following events shall *ipso facto* and without notice from the Registry Officer suspend the registry of the corporations concerned:—

Certain  
events to  
suspend  
registry.

- (a) The suspension of any of the acts, instruments or documents mentioned in the first and third subdivisions of the next preceding sub-section; or
- (b) The suspension of the corporate powers of the corporation;

Similarly, suspension of the registry of a corporation occurs *ipso facto* on the suspension of the charter, instrument of association, deed of settlement, or Act or Acts of incorporation, or of the license or other document of authority by which the corporation was authorized to exercise its corporate powers for the transaction of insurance. So, also, if the corporate powers of a corporation are suspended, the registry of the corporation is *ipso facto* suspended.

**Section  
49 (2)**

After such suspension or cancellation of registry any further undertaking of contracts of insurance by the corporation affected is unlawful, for the corporation became unregistered on the happening of any of the above events without any act of the Registry Officer.

And, upon proof that any of the said events has happened, the Registry Officer, after notice to the corporation in cases where any dispute is likely to arise, shall cause the proper entry to be made upon the register.

When the happening of any of the said events is disputed, the Registry Officer decides both as to the facts and the law. An appeal lies from his decision to the Divisional Court of the High Court: sub-section 3, *infra*.

Where  
event  
disputed.

(8) Where the happening of any of the events in the two next preceding sub-sections mentioned is disputed by written notice delivered to the Registry Officer at his office, the Registry Officer shall decide both as to the facts and as to the law, and render his decision in writing, subject however to appeal as in section 51 enacted.

In case of dispute, the Registry Officer decides both as to the facts and as to the law. For example, it would be a question of fact, in a disputed case, whether a certain resolution was a resolution of the corporation, but a matter of law whether said resolution was sufficient to commence winding-up proceedings.

Proviso.

Provided nevertheless that notice of the happening of such event if published by competent authority in the official *Gazette* of the province, dominion, country or state by which the corporation was incorporated, licensed or empowered to transact insur-

ance, or in the *Ontario Gazette*, or an official notice otherwise given by the province, territory, dominion, country or state, to the Registry Officer shall be sufficient authority to the Registry Officer for the entries on the register hereinbefore mentioned.

**Section  
49 (3)-(5).**

Cf. proviso to sub-section 1 of section 19, *supra*.

(4) When any corporation incorporated by, or by virtue of a statute of, Ontario, ceases to be registered, the Registry Officer shall file a notice of the fact in the office of the Master.

Notice to  
be filed  
on cesser  
of registry

Upon the happening of any of the events mentioned in sub-sections 1 and 2 of this section, the treasurer or other officer of the corporation, if incorporated by or by virtue of a statute of Ontario, becomes, *ipso facto*, interim receiver for the corporation, and an officer of the High Court, subject to its control and direction. The Registry Officer, on cesser of registry of such a corporation, files a notice of the fact in the office of the Master. By such notice the Court is informed that a receivership has commenced over which it has jurisdiction. For the meaning of "Master," see the next sub-section.

(5) In this section and subsequent sections, "Master" shall mean the Master in Ordinary in the case of a corporation having its head office in Toronto or in the county of York; and in the case of a corporation having its head office in any other county, shall mean the Local Master, or the officer acting as Local Master in such county.

Interpre-  
tation.

Master.

The place where the corporation has its head office, *i.e.* the place where the chief executive officers of the corporation transact its business, section 2 (20) *supra*, determines the place where the proceedings are to be carried on.

Sections  
49 (5)  
50 (1)-(3).

Local  
master.

If there is a vacancy in the office of Local Master, the Judge of the County Court for the County acts as Local Master until and unless another person is appointed: C. R. 125 (2).

Decision  
of the  
Registry  
officer to be  
in writing  
and to be  
delivered  
to the  
corpora-  
tion.

**50.** (1) Where the Registry Officer decides in any disputed case that a corporation is, or is not legally entitled to registry, or to renewal of registry, or where he suspends, revives or cancels the registry of a corporation, the Registry Officer, except as otherwise herein provided, shall render his decision in writing, and shall cause a copy of his decision certified under the seal of his office to be delivered by registered post, or otherwise, to the corporation at its head office or chief agency in Ontario.

Delivery to  
attorney.

The power of attorney from a corporation having its head office elsewhere than in Ontario to an agent resident in Ontario expressly declares that receipt of notices from the Registry Officer at the head office or chief agency of the corporation in Ontario, or personally by the attorney at the place where such chief agency is established shall be legal and binding on the corporation to all intents and purposes whatsoever: section 14 (2) *supra*.

Certified  
copies of  
decision.

(2) A certified copy of any such decision of the Registry Officer may be had on application at his office, and upon payment of the fee hereinafter prescribed.

For tariff of fees see section 62, *infra*.

Affidavits  
and deposi-  
tions to be  
filed.

(8) The affidavits and depositions received or taken by the Registry Officer in any disputed case shall be filed in his office.

See sections 7 (2) and 11 (2), *supra*.

(4) The evidence and proceedings in any matter before the Registry Officer may be reported by a stenographic writer who has taken an oath before the Registry Officer to faithfully report the same.

**Sections**  
**50 (4), 51 (1)**  
**Steno-**  
**graphic**  
**report of**  
**evidence.**

As to the oath to be taken by a stenographic writer of the High Court, Consol. Rule 146 (2) provides the form of oath as follow :—

" I, A. B., do solemnly and sincerely promise and swear that I will faithfully report the evidence and proceedings at the trial in each case in which it may be my duty to act as shorthand reporter. So help me God."

**51.** (1) Upon the decision of the Registry Officer that the corporation is or is not entitled to registry, or upon any suspension, revivor, or cancellation of registry by him, an appeal may be had to a Divisional Court of the High Court, the appellant having first given security for costs, in an amount to be determined by the Court or a Judge thereof or by General Rules as hereinafter provided for. Two clear days' previous notice of the application to fix the amount of such security shall be given to the Registry Officer at his office.

**Appeals**  
**from deci-**  
**sion of**  
**Registry**  
**officer.**

Cf. 38 & 39 Vic. c. 60 (Imp.), s. 11 (8); 39 & 40 Vic. c. 45 (Imp.), s. 7 (8).

An appeal may thus be taken from any decision of the Registry Officer relating to the registry of an insurance corporation. No appeal lies from his decision that an insurance agent is or is not entitled to registry under section 38 (4) *supra*, or from suspension or revocation of the registry under section 38 (11) *supra*.

*Security for costs.*—The Supreme Court of Security. Judicature may make rules or orders as to the form of appeals under this section and the trying thereof and otherwise relating thereto, sub-section (4) of

Section  
51 (1).

this section. If such rules do not prescribe the amount in which security is to be given the amount is to be determined by the Court or a Judge. The general rules governing the amount of security for costs are C. R. 1245-1250.

Notice.

*Two clear days' notice.*—In the computation of "clear days" both the first day and the last day are excluded, C. R. 475. The notice must be served on the Registry Officer at his office, service elsewhere will not suffice.

Effect of  
Appeal.

In the case of insurance corporations incorporated by or by virtue of a statute of Ontario, suspension or cancellation of registry operates *ipso facto* to make the treasurer, or other officer of the corporation in Ontario, having in charge the accounts and insurance funds of the corporation, interim receiver: section 53 (1) *infra*. It is the duty of the interim receiver, forthwith to deposit such moneys and securities for money in a chartered bank prescribed by the Rules (section 53 (2) *infra*), and to file an application, affidavit and bank receipts in the office of the Master: section 54 (1) (3), *infra*. The fact of the corporation taking an appeal from the decision of the Registry Officer does not avoid the necessity of these steps towards winding up. Neglect or refusal to comply with the Act in these respects would probably be held to disentitle the corporation from prosecuting the appeal.



(2) At least ten clear days' notice of appeal, and of any subsequent proceeding on the appeal, shall be given to the Registry Officer at his office.

Sections  
51 (2)-(4)  
52 (1).

Notice to  
registry  
officer.

see page 379  
520

Cf. sub-section (1) *supra*.

(3) Upon the production of final judgment, on appeal, if any, admitting the corporation to registry, or disallowing registry granted, or reversing the suspension, revivor or cancellation of registry, the Registry Officer shall cause the proper entry to be made on the register together with a minute of the judgment authorizing such entry, and the Registry Officer shall thereupon grant a certificate of registry, or cancel the registry granted according to the tenor of such judgment.

Entries on  
register.

Cf. 38 & 39 Vic. c. 60 (Imp.), s. 11 (9); 39 & 40 Vic. c. 45 (Imp.), s. 7 (9).

(4) The Supreme Court of Judicature may make rules or orders as to the form of appeals under this section and the trying thereof and otherwise relating thereto.

Rules as  
to appeals.

Cf. 39 & 40 Vic. c. 45 (Imp.), s-s. 8, 9; *Judicature Act*, R. S. O. 1887, c. 44, s. 105.

#### APPOINTMENT AND DUTIES OF RECEIVERS.

**52.** (1) Sections 53 to 59 inclusive shall apply only to insurance corporations incorporated by or by virtue of a statute of Ontario.

Applica-  
tion of  
sections  
52 to 59.

In the case of insurance corporations incorporated by or by virtue of a statute of Canada, recourse must be had to the *Winding-up Act*, R. S. C. c. 129.

**Sections  
52 (2) 53 (1)**

Case of two  
or more  
custodians  
of funds,  
etc.

(2) To such corporations the said sections shall equally apply where the accounts, account books, and insurance funds are in the charge, custody, possession or power of two or more persons: and in such case the words "receiver" and "interim receiver" shall include all of such persons unless and until other appointment or other disposition of the matter is made by the Court.

From the moment of suspension or cancellation of registry of a corporation to which these sections are applicable there is an ascertained person upon whom the duties of interim receiver are imposed. If the accounts, account books and insurance funds of the corporation are in the charge, possession or control of two or more persons, all of such persons are meant by the words "receiver" and "interim receiver": cf. *The Interpretation Act*, R. S. O. 1887, c. 1, s. 8 (24).

Effect of  
certain  
events or  
of non-  
registry.

**53.** (1) Upon the happening of any of the events mentioned in sub-sections 1 and 2 of section 49, or upon notice given by the Registry Officer of the corporation's registry being suspended or cancelled, or where a corporation after the 31st December, 1892, neglects to register or to renew its registry, the treasurer or other officer of the corporation in Ontario having in his charge, custody, possession or power the accounts, account books and insurance funds of the corporation shall *ipso facto* and during the pendency of an action or appeal, if any, or the liquidator appointed under chapter 183 of the Revised Statutes of Ontario, 1887, if any, shall *ipso facto* and during the pendency of an action or appeal, if any, become interim receiver for the corporation and an officer of the High Court subject to its control and direction, and he shall so remain unless and until other appointment or other disposition of the matter is made by the Court.

Under section 49 (*supra*), suspension or cancellation of registry occurs *ipso facto* upon the happening of one of the events therein specified,

Section  
53 (1).

without notice from the Registry Officer. In other cases suspension or cancellation of registry follows the decision of the Registry Officer; in such cases notice of the fact is given by the Registry Officer to the corporation concerned: section 50 (1). Where a corporation neglects after the 31st day of December, 1892, to register or to renew its registry, or where the registry of a corporation is cancelled or suspended, then if the corporation is incorporated by or by virtue of a statute of Ontario, section 52(1), the treasurer or other officer of the corporation in charge of the insurance funds, or the liquidator, if any, appointed under R. S. O. 1887, c. 183, becomes *ipso facto* interim receiver for the corporation and an officer of the High Court subject to its control and direction. The interim receiver remains in office until other appointment or disposition of the matter is made by the court: see s. 55 (9), *infra*.

The offices of receiver and liquidator may be united in the same person: *King v. Oriental Hotels Co.*, L. R. 5 Ch. App. 420; see, also, *re Oriental Hotels Co.*, L. R. 12 Eq. 126; *Boyle v. Bettws Colliery Co.*, 2 Ch. D. 726; *in re Pound, Sons, & Hutchins*, L. R. 42 Ch. Div. 412. There is no general rule that a receiver already appointed must be displaced by the liquidator: *re Pound, etc.*, L. R. 42 Ch. D. 402, citing *re Lloyd, etc.*, 6 Ch. D. 339; *Bartlett v. North Avenue Co.*, 53 L. T. N. S. 611, 612; but the ordinary course taken is to continue the receiver as liquidator: see Introductory Chapter, *supra*.

**Section  
53 (2).**Receiver to  
deposit  
forthwith  
in bank.

(2) The interim receiver shall forthwith deposit in the chartered bank prescribed by rules 163, 164 and 165 of the Consolidated Rules of Practice of the Supreme Court of Judicature, all moneys and securities for money in the charge, custody, possession or power of the corporation, or of himself as officer of the corporation, and shall, from time to time, so deposit all further moneys or securities that come into his possession or power as receiver unless and until otherwise ordered by the Court.

C. R. 164. "A person desiring to pay money into court shall pay the same into the Canadian Bank of Commerce at Toronto, or at some branch or agency thereof, or as mentioned in Rule 165, and in no other way.

C. R. 165. "Money required to be paid into Court in any of the following places (so long as the Canadian Bank of Commerce shall have no branch office thereat) shall be paid into the branch or agency office of the Bank set opposite the said places respectively:—

ST. THOMAS .....	The Merchants Bank.
KINGSTON .....	The Bank of Montreal.
OWEN SOUND.....	The Merchants Bank.
MILTON .....	The Bank of Hamilton.
PERTH .....	The Bank of Montreal.
BROCKVILLE .....	The Bank of Montreal.
NAPANEE .....	The Merchants Bank.
COBOURG .....	The Bank of Montreal.
WHITBY.....	The Dominion Bank.
BRAMPTON .....	The Merchants Bank.
PICTON .....	The Bank of Montreal.
PEMBROKE .....	The Bank of Ottawa.
CORNWALL.....	The Bank of Montreal.
LINDSAY .....	The Bank of Montreal.
WELLAND .....	The Imperial Bank.
PORT ARTHUR .....	The Ontario Bank.

Sections  
53 (3)-(4)  
54 (1).

Bank to  
give  
receipts.

(8) On receiving from the interim receiver the moneys and securities for money of the corporation, together with his written notice that by virtue of this Act, the insurance corporation (*naming it*), has become unregistered, and that he is interim receiver for the same, the bank shall give the interim receiver a receipt for the moneys and a separate receipt for the securities, specifying each security, each receipt being in duplicate; and the said receipts shall acknowledge the moneys and the securities respectively to have been deposited by the interim receiver, (*naming him*) to the credit of the unregistered corporation (*naming it*), and as subject to the order of the High Court.

This written notice of the interim receiver to the bank is the bank's authority to receive the money and securities. Cf. the Direction to the Bank to receive money, obtained under C. R. 166. The receipts are in duplicate, one of each of the duplicate receipts must be filed with the other documents specified in section 54, *infra*, in the office of the Master.

(4) The payment of interest on the moneys so deposited in the bank shall be governed by the same rules as in the case of money received by the bank to the credit of a cause.

Interest on  
moneys  
deposited.

Cf. C. R. 146, 147.

**54.** (1) After depositing the moneys and securities in the bank as required by sub-section 2 of section 53 the interim receiver shall forthwith file an application in the office of the Master to the following effect :—

Applica-  
tion to be  
filed by  
interim  
receiver in  
Master's  
office.

THE INSURANCE CORPORATIONS ACT, 1892.

In the High Court of Justice, Division.  
In the matter of (*Name of corporation*) an unregistered insurance cor-  
poration.

Form of  
applica-  
tion for  
confirma-  
tion or  
discharge.

**Section  
54 (2)-(3).**

I, C. D., by virtue of *The Insurance Corporations Act, 1893* (or of order made thereunder, as the case may be) interim receiver for the above-named corporation, do on the grounds set forth in the annexed affidavit apply to the Court for confirmation of me in my office of receiver (or for discharge of me from my office of receiver, according as the interim receiver applies to be confirmed or discharged), and for an appointment of a day on which my application shall be considered.

Dated at                      this                      day of                      18

C. D.

In the case of a corporation having its head office at Toronto or in the County of York this application must be filed in the office of the Master in Ordinary. In case of other corporations the application must be filed with the Local Master or officer acting as Local Master for the county in which the head office of the corporation is situate: section 49 (5) *supra*.

In what  
Division  
entitled.

(2) The foregoing application may be entitled in any Division of the High Court; but every subsequent proceeding shall be entitled in that Division wherein the application was entitled.

The appointment of receivers, which was formerly exclusively within the jurisdiction of the Court of Chancery, may now be made by any Division of the High Court, R. S. O. 1887, c. 44, s. 53 (8). See Introductory Chapter, *supra*.

Bank  
receipt  
and  
affidavit  
to be filed  
with the  
applica-  
tion.

(3) Together with the foregoing application the interim receiver shall file in the office of the Master, one of each of the duplicate receipts given by the bank as aforesaid, and also an affidavit to the following effect, the necessary variations being made where by operation of this Act, two or more persons are made interim receiver, and join in the affidavit.

THE INSURANCE CORPORATIONS ACT, 1892.

In the High Court of Justice, Division.  
In the matter of [name of the corporation] an unregistered insurance  
corporation and the application of C. D., interim receiver, bearing  
date the day of 18 .

Form of  
affidavit.

I, C. D., by virtue of *The Insurance Corporations Act, 1892*, interim  
receiver for the [naming the corporation] make oath and say:—

1. That the [naming the corporation] ceased to be registered under  
*The Insurance Corporations Act, 1892*, on the day of 18  
and that thereupon by virtue of the said Act I became interim receiver  
for the said corporation.

2. That, when the said corporation so ceased to be registered, I held  
therein the office of treasurer [or as the case may be] and that as such  
officer I had in my custody, possession or power of the funds [or if a cor-  
poration having funds separate and distinct from the funds of the insurance  
branch then say insurance funds] of the corporation.

3. That all the moneys and securities for money in my custody,  
possession or power when the said corporation ceased to be registered or  
subsequently and up to the time of making deposit in the bank as  
required by the said Act, are fully and truly set out in the schedule A  
hereto; also that the said deposit thereof is correctly vouched for by the  
bank's receipts hereto annexed.

4. That the other assets of the said corporation including moneys or  
securities for money that have come into my charge, custody, possession  
or power since the time of making the said deposit are fully and truly  
set out in the schedule B hereto.

5. That, as treasurer [or other officer, as the case may be] of the said  
corporation, I gave securities for the faithful performance of my duties to  
the corporation as follows:—

[Here specify the securities given, if bonds, give names and addresses of  
the sureties and the sums in which they are severally bound.]

6. That the said securities are still in force and are now in the cus-  
tody, possession or power of [here give the name and address of the custodian  
or bailee.]

7. That I have filed herewith an application in the Master's office,  
praying the Court to confirm me in my office of receiver [or to discharge  
me of my office as receiver, as the case may be] and that the following are  
the material facts in support of the said application, [here state shortly  
the material facts.]

Sworn at

this

day of

18

}

(Signature.)

before me, etc.

**Section  
54 (4)-(6)**

Before  
whom the  
affidavit  
may be  
sworn.

(4) Such affidavit may be sworn to before any person duly authorized to administer oaths in any legal proceeding.

Cf. section 47 (2), *supra*.

Securities  
previously  
given by  
receiver to  
remain in  
force.

(5) Until the interim receiver is discharged of his office, or until new securities are taken from him by order of the Court, the securities given by him to the corporation and in force at the cesser of registry, shall continue in as full force and validity as if the corporation had continued to be registered.

Under the next sub-section the securities given by the interim receiver as one of its financial officers to the corporation are to be filed in the Master's office forthwith after notice to the persons in whose custody, possession or power such securities are: see paragraphs 5 and 6 of the affidavit, *supra*.

The Master  
to issue his  
certificate  
of the filing  
and call in  
the securi-  
ties.

Non-deliv-  
ery punish-  
able as a  
contempt.

(6) On the filing of the documents specified in this section the Master shall issue to the interim receiver his certificate of the filing, and shall issue his order to the person or persons having in his or their charge, custody, possession or power the securities mentioned in the next preceding sub-section, to deliver the same forthwith at the Master's office to be filed, and on any refusal, neglect or delay to obey the order, such person or persons shall be liable to be committed for contempt of court as provided in section 58.

By paragraph 6 of the affidavit of the interim receiver, *supra*, the persons to whom this order is to be directed are ascertained. Disobedience to the order of the Master to file the securities is a contempt. A motion to commit such defaulter may on two clear day's notice be made before a Judge of the High Court in Chambers: section 58 (2), *infra*.



(7) If no such securities as mentioned in sub-section 5, or if the existing securities are not in the opinion of the Master, satisfactory or sufficient, the Master may order the interim receiver within a time limited to give securities or to give other or additional securities; and on the interim receiver's default of compliance, the Master may remove him and appoint another interim receiver.

Sections  
54 (7).  
55 (1)-(3)

Where no securities exist or the securities are not satisfactory or sufficient.

The amount of the security required will vary according to circumstances. Usually security will be required to be given by the receiver and at least two sureties in double the amount of the probable annual rents of realty, and double the probable amount of personal estate, likely to come to his hands: Holmsted and Langton, 219. Under sub-section 3 of section 56, *infra*, the Master may accept as a receiver's security the bond of any guarantee company duly registered under this Act.

**55.** (1) The Master in and by his certificate of filing, or by *ex parte* order or otherwise, may appoint a place and a time, such time being not less than twenty-one days from the date of the certificate or order, at which time he will hear the application of the interim receiver, and will confirm the interim receiver in his office, or appoint another receiver, or make such other disposition of the matter as shall appear proper.

Place and time to be appointed for hearing application

Until the receiver is discharged of his office the Registry Officer is a competent party for taking or commencing or prosecuting any proceeding relative to a receiver or his sureties: section 56 (10), *infra*.

(2) Public notice shall be given by the interim receiver of his application, and of the place and time appointed by the Master for the hearing of the same; such notice shall be pub-

Public notice of the application and of the hearing.

Sections  
55 (1) 56 (1)

lished in two issues of the *Ontario Gazette*, and once a week for two weeks in a newspaper published in the county where the head office or chief office of the unregistered corporation is situated, and a copy of the notice shall be delivered to the Registry Officer at his office at least ten days before the day appointed for the hearing of the application, and the notice shall be to the following effect:—

## INSURANCE CORPORATIONS ACT, 1892.

Form of  
notice

In the High Court of Justice, Division.  
In the matter of the [naming the corporation] an unregistered insurance corporation.

TAKE NOTICE, that C. D., interim receiver of the said corporation has filed in the Master's office at ——— an application to be confirmed in his office [or to be discharged of his office] as receiver, and that the Master has appointed [place, day and hour] for the hearing of the said application, at which place and time the Master will make such disposition of the matter as shall appear proper.

Dated at the C. D.  
day of 18 .

Cf. C. R. 116.

Disposal of  
application  
by Master.

**56.** (1) At the time and place appointed the Master may confirm the interim receiver in or discharge him of his office, or may appoint another receiver, or, generally, may make then or afterwards, such disposition of the matter as will best expedite the beneficial realization of the assets, the discharge of the liabilities, and the distribution of the surplus among the persons entitled.

Cf. C. R. 119, 120.

Powers of  
the Master.

(2) The Master shall decide upon the security or securities to be given by the receiver, upon the mode and amount of his compensation, shall fix the times for the submission and passing of his accounts, shall settle advertisements deemed to be necessary, and schedules of creditors and contributories, direct the

realization of assets, the discharge of liabilities and the distribution of the surplus, and shall make such orders and issue such directions as shall best effectuate the provisions of this Act; and generally shall have all the powers which might be exercised on any reference to him under a judgment or order of the High Court.

Section  
56 (2)-(4).

In *West v. Sinclair*, (14 Jan. 1892), the Master in Ordinary held that under 53 Vic. c. 37 (Ont.), an original and special jurisdiction is given to certain judicial officers who, therefore, come under the rules governing statutory powers conferred upon a judge or officer as *persona designata*. It has been held that in such case no jurisdiction other than that given by the Act, or necessarily incident to it, can be exercised; and that statutes creating special jurisdictions are not to be extended beyond the fair import of the statutory grant, and that presumptions which are incident to the ordinary tribunals are not allowable in importing powers in the jurisdiction other than those specially given by the Legislature.

(9) The Master may accept as a receiver's security the bond of any guarantee company duly registered under this Act.

Guarantee  
company's  
bond as  
security.

Cf. *Stokes in bonis*, L. R. 7 P. Div. 235; Seton, 4th ed., p. 426; Archbold's Practice in Judges' Chambers, 297.

(4) The Master may appoint as receiver any trusts company approved by the Lieutenant-Governor in council and accepted by the High Court as a trusts company.

Trusts  
company  
as receiver.

Cf. C. R. 191, *re* Toronto General Trusts Company. The Trusts Corporation of Ontario has also been approved by the Lieutenant-Governor in

Section  
56 (4)-(8).

Council and accepted by the High Court as a trusts company.

Appeal  
from  
Master's  
decision.

(5) Orders and certificates made by the Master under this Act, shall be appealable to a Judge of the High Court in like manner as other orders and certificates of the Master.

Consoli-  
dated  
Rules to  
apply.

(6) So far as not inconsistent with the provisions of this Act, the Rules of the Supreme Court of Judicature shall apply to all proceedings under this Act.

See C. R. 116-123.

Books, etc.  
of receiver  
to be  
accessible  
to Registry  
officer.

(7) The books, financial statements, schedules, accounts and vouchers of every receiver under this Act shall be accessible to the Registry Officer, or to any person authorized under his hand and seal as is, in the case of friendly societies, enacted by section 45; and if any receiver refuses or neglects to afford such access, or if he makes a wilfully false statement or untrue entry, he shall be guilty of an offence as against sub-section 5 of section 30, all the provisions of which sub-section shall equally apply in the case of an offence committed against this sub-section.

Penalty  
for refusing  
access.

Upon summary conviction before any police magistrate, or justice of the peace, having jurisdiction where the offence was committed, the offender is liable to be imprisoned in the Central Prison, or in any gaol of the Province, with or without hard labour for a period not exceeding twelve months: section 30 (5) *supra*.

Receiver to  
deposit  
moneys  
in bank.

(8) Unless and until otherwise ordered by the Court, the receiver shall forthwith deposit in the bank prescribed by sub-section 2 of section 53, to the credit of the unregistered insurance corporation all moneys by him from time to time received, and, ten days before the time appointed for the passing of any account, he shall deliver a certified copy of the account to the

Registry Officer at his office and obtain his receipt therefor; and within five days after the passing of any account, the receiver shall in like manner deliver to the Registry Officer a certified copy of the account as passed. Section 56 (9)-(10).

The Registry Officer is a competent party for taking or commencing or prosecuting any proceeding relative to a receiver or his sureties: subsection (10) of this section, *infra*.

(9) In case of default by any receiver in leaving or passing any account, or in making any deposit or payment, or of laches or negligence in performing any other duty devolving upon the receiver by virtue of his office under this Act, or of any order or direction of the court, the Master either without motion, or on motion by the Registry Officer or any person interested, may deal with the receiver as provided in Consolidated Rule 123, or may remove the receiver and appoint another, or may make such other order as shall best effectuate the purposes of this Act. Default of receiver in leaving or passing accounts, etc.

Cf. Consolidated Order (England), xxxv. 23.

By Consolidated Rule 123, in default of compliance with a direction of the Master, the receiver may, on the passing of his accounts, be disallowed any salary or compensation for his services, and may be charged with interest upon his balances.

(10) Until the receiver is discharged of his office, the Registry Officer shall be a competent party for taking or commencing or prosecuting any proceeding relative to a receiver or his sureties. Registry Officer a party.

When a receiver has passed his final accounts, and paid his balances as directed by the court, an application may be made to discharge the bond; all parties interested are entitled to notice of the application: *Brown v. Perry*, 1 Chy. Ch. 253.

Sections  
57 (1)-(2),  
58 (1).

On default  
of interim  
receiver  
Master  
may  
appoint  
another.

**57.** (1) If the person or persons made interim receiver by this Act or order hereunder, fail to comply with the provisions of section 58 within eight days after becoming interim receiver, then the Registry Officer or any policy holder, or certificate holder, or any claimant or creditor may on motion, supported by an affidavit declaring the facts, move the Master to issue his certificate of default, and may by the same or by subsequent motion, move the Master to appoint an interim receiver, and to appoint a place and time for confirming such interim receiver in his office, or for disposing of the matter otherwise, and upon such motion or motions the Master may issue his certificate of default and may appoint an interim receiver and may make such further order or orders as may seem necessary or expedient for securing the property of the corporation.

Cf. Consolidated Order (England), xxxv. 23.

For notice of motion: see C. R. 479. In cases of urgency the Master has power to shorten the time of notice.

Duties of  
new  
interim  
receiver.

(2) An interim receiver appointed by the Master shall under the direction of the Master, take immediate possession of the moneys and securities for money of the corporation, and shall thereafter perform all the duties required of an interim receiver by this Act, and on default of performance shall be liable to the penalties imposed by this Act.

Proceed-  
ings on  
default of  
compliance

**58.** (1) On any non-compliance by an interim receiver or by any officer, agent or employee of the corporation with any provision of the sections 58 and 54 or with any order made, or summons or direction issued by the Master under this Act, then upon motion as enacted in sub-section 1 of section 57, any of the persons therein mentioned may move the Master to issue his certificate of the default, and his certificate shall be conclusive evidence of such default for purposes of any proceedings taken by any of such persons, under this section or under section 59.

The Master's certificate of default is the only evidence of default which is necessary, or can be used: Paxton v. Dryden, 6 P. R. 83; Wilson v. Wilson, 7 P. R. 57. The certificate of default should bear the latest possible date: Somerville v. Joyce, 1 Chy. Ch. 207. The certificate may be read on the hearing of the motion, though no notice of reading it be given: Malloch v. Plunkett, 1 Chy. Ch. 381.

Section  
58 (1)-(2).

Where the receiver has complied with the order, but it is contended that his compliance is insufficient, the question is determined by the Master upon a warrant to bring in a better affidavit or accounts, as the case may be: Meikley v. Casselman, 1 Chy. Ch. 292; and see Wilson v. Wilson, 7 P. R. 57.

(2) A motion to commit such defaulter may on two clear days' notice be made before a Judge of the High Court in chambers.

Motion to  
commit.

Cf. C. R. 479; Exchange Bank v. Newell, 19 C. L. J. 253.

The motion must be made before a Judge in Chambers; cf. Keefe v. Ward, 18 C. L. J. 166.

Where the order or direction has been complied with, after notice of motion served, the motion will be refused, but the applicant will be entitled to his costs: Berrie v. Moore, 1 Chy. Ch. 107; Malloch v. Plunkett, 1 Chy. Ch. 381. And after committal, the party is entitled to be discharged on production of the Master's certificate



Sections  
58 (2), 59  
(1-3), 60.

that the order has been complied with, and the sufficiency of the compliance will not be inquired into, nor will the payment of costs be made a condition precedent of the discharge: *Clark v. Clark*, 3 Chy. Ch. 67.

**59.** (1) If any person or persons made interim receiver by this Act or by order hereunder, receive from the Registry Officer notice under his hand and the seal of his office directing such person or persons to comply with the provisions of section 53 or of section 54, and if the person or persons so notified shall not within ten days after the notice delivered comply accordingly, such person or persons shall each and every of them be guilty of an offence, and upon summary conviction thereof before any police magistrate or justice of the peace having jurisdiction where the offence was committed, be liable to a penalty not exceeding \$500 and costs and not less than \$100 and costs, and in default of payment the offender shall be imprisoned with or without hard labour for a term not exceeding three months and not less than one month; and, on a second or any subsequent conviction, he shall be imprisoned with hard labour for a term not exceeding twelve months and not less than three months.

(2) All the provisions contained in sub-sections 3, 4, 5 and 6 of section 27 shall apply equally in the case of an offence committed under this section.

(3) The provisions contained in section 26 shall apply equally to evidence in any cause, matter, proceeding, or trial, arising under or out of this section.

*Vide* sections 26 and 27, *supra*.

Offence by  
corpora-  
tion is  
offence by  
officers  
thereof;  
continued  
default  
constitutes  
new  
offence.

**60.** Every offence committed by a corporation, or by the insurance branch of a corporation against this Act, shall be deemed to have been also committed by every officer of the same bound by virtue of his office or otherwise to fulfil any duty whereof such offence is a breach, or if there be no such officer, then



by every member of the committee of management of the same, Sections 60-62.  
 unless such member be proved to have been ignorant of his  
 duty, or to have attempted to prevent the commission of such  
 offence; and every default under this Act constituting an offence  
 constitutes, if continued, a new offence in every week during  
 which the default continues.

Cf. 38 & 39 Vic. c. 60 (Imp.) s. 14 (4).

**61.** The taxed costs of any civil proceeding duly taken by Cost of proceeding under the Act.  
 the Registry Officer or by a receiver or interim receiver under  
 this Act, shall be paid out of the funds of the insurance corpora-  
 tion; the costs of all other proceedings shall be in the discretion  
 of the Court.

# TARIFF OF FEES.

**62.** The fees by this section prescribed shall be payable to Fees payable to Provincial Treasurer.  
 the Provincial Treasurer of Ontario.

One of the duplicate original receipts given by  
 the Provincial Treasury on payment of any of the  
 following fees, must be filed with the Registry  
 Officer.

In the case of an application or other document or instrument Time of payment.  
 to be filed, examined, or deposited, the fees shall be paid before  
 the application or other document or instrument is considered ;  
 in the case of registry or certificates of registry the fee shall be  
 payable before the corporation is registered.

Cf. section 2 (22), *supra*.

*Division I.*—Corporations deriving their powers from the I. Corporations empowered by Ontario.  
 Province of Ontario.

1. Inasmuch as insurance corporations licensed by the Ontario licensees.  
 Province are under the provisions of *The Ontario Insurance Act*  
 required to pay annually to the Province an assessment and  
 license fees, the said corporations shall without application and  
 without additional charge be entitled to be registered under this  
 Act.

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<b>Section 62.</b>	<b>2. Life Insurance Agent's Certificate of Agency,</b>	
	original or renewed. s. 38.....	\$2 00
<b>Life Insurance Agent's Certificate.</b>	<b>3. In the case of Ontario corporations within the</b>	
<b>Certain Ontario corporations.</b>	meaning of section 4 (2) or section 8, the fees shall be as follows :—	
	<b>A.—Corporations or incorporated Branches having in Ontario 500 members or less :</b>	
	(a) Application for initial registry. s. 12 (1)	\$2 00
	(b) Extension of the time for making application. s. 12 (2) .....	2 00
	(c) Certificate of Registry, original or renewed	5 00
	(d) Interim Certificate, or extension of certificate. s. 21 .....	2 00
	(e) Revivor of Registry after suspension .....	4 00
	(f) Change of name s. 24.....	3 00
	<b>B.—Corporations or incorporated Branches having in Ontario over 500 and not more than 1,500 members :</b>	
	(a) Application for initial registry. s. 12 (1)	\$3 00
	(b) Extension of time for making application. s. 12 (2).....	3 00
	(c) Certificate of Registry, original or renewed .....	10 00
	(d) Interim Certificate, or extension of certificate. s. 21.....	3 00
	(e) Revivor of Registry after suspension .....	6 00
	(f) Change of name .....	6 00
	<b>C.—Corporations or incorporated Branches having in Ontario over 1,500 and not more than 2,500 members :</b>	
	(a) Application for initial registry. s. 12 (1)	\$4 00
	(b) Extension of time for making application s. 12 (2).....	4 00

# Tariff of Fees.

353

(c) Certificate of Registry, original or renewed	\$15 00	Section 62.
(d) Interim certificate, or extension of certificate. s. 21.....	4 00	
(e) Revivor of Registry after suspension .....	8 00	
(f) Change of name .....	8 00	

## D.—Corporations or incorporated Branches having in Ontario more than 2,500 members :

(a) Application for original registry. s. 12 (1)	5 00
(b) Extension of time for making application. s. 12 (2).....	5 00
(c) Certificate of Registry, original or renewed	25 00
(d) Interim Certificate or extension of certificate. s. 21 .....	5 00
(e) Revivor of Registry after suspension.....	10 00
(f) Change of name .....	10 00

## Division II.—Corporations deriving their powers from an Act of Canada or from a document of authorization issued under *The Insurance Act* of Canada.

II. Corporations empowered by Acts of Canada.

### 1. In the case of corporations deriving their powers from a license or document of authorization issued under *The Insurance Act* of Canada, except corporations included in section 38 thereof, the fees shall be as follows :

Licensees.

R. S. C. c. 124.

(a) Application for initial registry. s. 12.....	\$5 00
(b) Extension of time for making applications. s. 12 (2) .....	2 00
(c) Filing power of attorney in case of extra-Provincial corporations. s. 14.....	5 00
(d) Change of attorney. s. 16.....	5 00
(e) Certificate of registry, original or renewed	100 00
(f) Interim Certificate of Registry, or extension of certificate. s. 21.....	5 00
(g) Revivor of Registry after suspension. ss. 6 (3), 44.....	25 00
(h) Life Insurance Agent's Certificate of Agency, original or renewed.....	2 00

Section  
62.Corpora-  
tions em-  
powered  
under  
R. S. C. c.  
124, s. 38.

see page 520

2. In the case of corporations empowered under section 38 of *The Insurance Act* of Canada, the fees shall be as follows:

(a) Application for initial registry. s. 12 .....	\$5 00
(b) Extension of time for making application. s. 12 (2) .....	2 00
(c) Filing power of attorney in case of extra- Provincial corporation. s. 14 .....	5 00
(d) Change of attorney. s. 16 .....	5 00
(e) Certificate of registry, original or renewed.	75 00
(f) Interim certificate of registry, or exten- sion of certificate. s. 21 .....	5 00
(g) Revivor of registry after suspension. ss. 6 (8) 44 .....	20 00
(h) Life Insurance Agent's Certificate of Agency, original or renewed .....	2 00

Corpora-  
tions em-  
powered by  
sundry  
other Acts  
of Canada.

3. In the case of the corporations mentioned in sub-sections 1, 2, and 4 of section 9 of this Act, the fees shall be as in sub-division 8 *D* of *Division I* of this section.

Trades  
Union  
Insurance  
Societies.

4. In the case of the corporations mentioned in sub-sections 3 of section 9 of this Act, the fees shall be as follows:

(a) Application for initial registry .....	\$2 00
(b) Extension of time for making application. s. 12 (2) .....	1 00
(c) Filing power of attorney in extra-Provin- cial corporations. s. 14 .....	2 00
(d) Change of attorney. s. 16 .....	2 00
(e) Certificate of registry, original or renewed.	5 00
(f) Interim certificate of registry, or exten- sion of certificate. s. 21 .....	2 00
(g) Revivor of registry after suspension. s. 44	3 00

*Division III.*—Friendly societies not included in either of the foregoing Divisions. Sections 62-63.

In the case of the friendly societies mentioned in section 10, the fees shall be as in sub-division 8 *D* of *Division I* of this section. III. Foreign friendly societies. 5-20

*Division IV.*—Miscellaneous.

Office copy of decision of Registry Officer.....	\$1 00	IV. Miscellaneous.
Certified copy of entry on register.....	50	
Copies of, or extracts, from documents filed with Registry Officer, per folio of 100 words .....	10	
Examination of mortgages tendered as deposit under <i>The Ontario Insurance Act</i> , for each mortgage.....	5 00	

**63.** (1) Section 72 of *The Ontario Insurance Act* is amended by adding thereto the following sub-section: Rev. Stat. c. 167, s. 72, amended.

“(2) Where a policy on the premium note plan is made to two or more persons, the person whose name stands first on the register of policy holders, and no others shall be entitled to vote.”

A similar rule prevails in share holding companies where stock is held in the name of two or more persons: 25 & 26 Vic. c. 89 (*Companies Act*, 1862, Imp.), s. 15, Schedule I, Table A (46); Thring, p. 319. *The Ontario Insurance Act*, section 81, makes the right of voting in meetings of mutual fire insurance companies a personal franchise exercisable only by such members “as attend for that purpose in their own proper persons;” consequently no corporation can vote at such meetings.

Also sub-section 1 of section 5 of the said Act is amended by striking out the word “nine” in the third line, and inserting the word “fifteen” in lieu thereof. Also s. 5 (1) amended.

**Section  
63.**

The number of directors that any company incorporated under *The Ontario Insurance Act* may have is now fixed at fifteen.

Also s. 130  
(2)  
amended.

Also sub-section 2 of section 130 of the said Act is amended by striking out all the words after "trust money" and inserting in lieu thereof the following words: "or shall remain deposited at interest in the name of the company in a chartered bank of Ontario, or in any building society or loan company in Ontario, by an Act of Ontario or of the Dominion of Canada duly authorized to receive deposits." Cf. *supra*, s. 29 (2).

Rev. Stat.  
c. 172, s. 1,  
amended.

Also section 1 of *The Act respecting Benerolent, Provident and other Societies*, as amended by section 9 of an Act passed in the fifty-third year of Her Majesty's reign and chaptered 89, is hereby amended by adding thereto the following sub-sections:—

"(2) If a body incorporated under this Act does not go into actual operation within two years after incorporation, or, for two consecutive years, does not use its corporate powers for the purpose or for the chief purpose set forth in the declaration required by section 5 of this Act, such non-user shall *ipso facto* work a forfeiture of the corporate powers, except so far as necessary for winding up the corporation; and, in any action or proceeding where such non-user is alleged, proof of user shall lie upon the corporation."

Cf. R. S. C. c. 124, s. 24; c. 119, s. 83; R. S. O. 1887, c. 157, s. 70; c. 167, s. 7.

"(3) For the purposes of this Act, affidavits and depositions may be taken and made before any justice of the peace, notary public or commissioner in the High Court for taking affidavits."

Compare section 47 (2), *supra*.

s. 17 re-  
pealed.

Also section 17 of the said *Act respecting Benerolent, Provident and other Societies*, is hereby repealed so far as relates to any friendly society that is within the intent of this Act.

The certificate of the Registrar of Friendly Societies as to any society within the intent of *The Insurance Corporations Act, 1892*, is, subject to appeal, conclusive of the right of the society to undertake contracts of insurance in Ontario.

Section 93.

(2) All Acts or parts of Acts inconsistent with this Act are hereby repealed.

Inconsistent provisions repealed.

SUMMARY

OF ENACTMENTS AMENDED OR REPEALED BY THE *INSURANCE CORPORATIONS ACT, 1892.*

(55 Vic. c. 39.)

ENACTMENTS AMENDED OR REPEALED.

55 V. C. 39, AMENDING OR REPEALING SAME.

R. S. O. 1887, c. 167, s. 3	(2) amended by.....	Section 27 (7)
s. 5 (1)	" .....	" 63 (1)
s. 20	repealed by.....	" 24 (3)
s. 22	" .....	" 24 (3)
s. 23	" .....	" 24 (3)
s. 55	" .....	" 27 (7)
s. 56	" .....	" 27 (7)
s. 72	amended by.....	" 63 (1)
s. 100	repealed by.....	" 28 (2)
s. 130 (2)	amended by.....	" 63 (1)
c. 172, s. 1	" .....	" 63 (1)
s. 11	superseded by.....	" 37 (1) read with 63 (2)
s. 17	repealed so far as relates to any friendly society within the intent of the <i>Insurance Corporations Act</i> .....	" 63 (1)
s. 19 (1)	amended .....	" 24 (3)
51 Vic. c. 22, s. 1	repealed .....	" 37 (2)
s. 2	" .....	" 37 (2)
s. 3	amended.....	" 37 (2)
s. 4	repealed .....	" 37 (2)
All prior enactments inconsistent with <i>The Insurance Corporations Act</i>	repealed .....	" 63 (2)

BIBLIOTHEQUE DE DROIT



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## APPENDIX A.

### SUBSIDIARY ACTS (AS AFFECTED BY SUBSEQUENT ENACTMENTS) WITH ANNOTATIONS :

- 1.—R. S. O. 1887, c. 136 (as amended or affected by subsequent enactments), *An Act to secure to wives and children, the Benefit of Life Insurance*.—Applicable to all contracts of Insurance, (Life, Accident, &c.), based on the expectation of human life, whether made by Insurance Companies, or by Friendly Societies.
  - 2.—R. S. O. 1887, c. 167, sections 114-119, Statutory Conditions and Provisions relating thereto, together with subsequent auxiliary or declaratory enactments,—Applicable to all Fire Insurance Contracts whatsoever in Ontario.
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BIBLIOTHEQUE DE DROIT

11

6

## APPENDIX A.

### R. S. O. 1887. c. 136, AS AFFECTED BY SUBSEQUENT ENACTMENTS.

#### AN ACT TO SECURE TO WIVES AND CHILDREN THE BENEFIT OF LIFE INSURANCE.

1. The provisions of this Act shall apply to every lawful contract of R. S. O. insurance in writing now in force or hereafter effected which is based 1887, c. 136. s. 1, amended by 53 Vic. c. 39, s. 1. on the expectation of human life, and shall include life insurance on the endowment plan as well as every other, and shall also extend to the said contracts of insurance where any declaration indorsed thereon or attached thereto, though made before the 25th day of March, 1884, would have been or be within the operation and provisions of this Act, if the same had been made subsequent to the said date. 47 V. c. 20, s. 1; 48 V. c. 28, s. 6. Application of Act.

Cf. *Swift v. Provincial Provident Institution*, 17 A. R. 66; but see section 37 (1) page 274, *supra*; 51 Vic. c. 22 (Ont.) ss. 1 and 2, repealed by section 37 (2) *supra*.

2. It is hereby declared to have been lawful for any person on or s. 2. before the 18th day of September, 1866, to endorse upon or attach to any Insurances effected before 18th day of September, 1865, whether the policy was issued before or after April, 1865. might marriage, a written declaration that the insurance was for the benefit of within one year be declared in his wife, or of his wife and children, or of his wife and some or one of his children, or of his children only, or of some or one of them, and to in favour of wife and apportion the amount of the insurance money as he deemed proper children. where the insurance was declared to be for the benefit of more than one. 47 V. c. 20, s. 2.

"Wife" and "children" are interpreted by section 7. If the person assured under a policy in existence prior to 18th Sept., 1865, did not, on or before the 18th Sept., 1866, make a declaration as to the policy, he may do so now under section 5 (*infra*).

**s. 3.** **3.** Any person may insure his life for the whole term thereof, or for any definite period, for the benefit of his wife, or of his wife and children, or of his wife and some or one of his children, or of his children only, or of some or one of them, and, where the insurance is effected for the benefit of more than one, he may apportion the amount of the insurance money as he may deem proper. 47 V. c. 20, s. 20, s. 3.

**s. 4.** **4.** The insurance may be effected either in the name of the person whose life is insured, or in the name of his wife, or of any other person (with the assent of such other person) as trustee. 47 V. c. 20, s. 4.

**s. 5 (1), as amended by 53 Vic. c. 39, s. 2.** **5.** (1) In case a policy of insurance effected by a man on his life is expressed upon the face of it to be for the benefit of his wife, or of his wife and children, or any of them, or in case he has heretofore endorsed, or may hereafter endorse, or by any writing identifying the policy by its number or otherwise, has made or may hereafter make a declaration that the policy is for the benefit of his wife, or of his wife and children, or any of them, such policy shall enure, and be deemed a trust for the benefit of his wife for her separate use, and of his children or any of them, according to the intent so expressed or declared, and so long as any object of the trust remains, the money payable under the policy shall not be subject to the control of the husband or his creditors, or form part of his estate when the sum secured by the policy becomes payable; but this shall not be held to interfere with any pledge of the policy to any person prior to such declaration. 47 V. c. 20, s. 5.

See *Scott, et al. v. Scott*, 20 O. R. 313; *re Lynn, Lynn v. The Toronto General Trusts Co.*, 20 O. R. 475; *Mingeaud v. Packer*, 21 O. R. 267; *re Cameron*, 21 O. R. 634. "Wife" and "children" are interpreted by section 7 *infra*. The declaration may be in the following form: "Know all men by these presents, that I, A. B., the person assured by policy number \_\_\_\_\_, issued by the \_\_\_\_\_ Insurance Company, do hereby, pursuant to the statute in that behalf, declare that such policy shall be for the benefit of (*set out names of intended beneficiaries, and other particulars, as*) my wife (*name*), and my children (*naming the children*) or, my children of my present marriage (*naming them*) or, my children of my former and present



Such insurance to follow the law of insurance for wife and children.

(2) Whatever, under the principal Act, a man may lawfully do in respect of insurance effected upon his life, may also, under the like circumstances, be done by a woman in respect of insurance effected upon her life, and the like rules of construction shall prevail.

R. S. O. c. 136, s. 6 (1), first amended by 51 Vic. c. 22, s. 3, again by 53 Vic. c. 39, s. 6. Assured may make and alter apportionment.

6. (1) The insured may by an instrument in writing attached to or indorsed on, or identifying the policy by its number or otherwise, vary a policy or a declaration or an apportionment previously made so as to restrict or extend, transfer or limit the benefits of the policy to the wife alone, or the children, or to one or more of them, although the policy is expressed or declared to be for the benefit of the wife and children, or of the wife alone, or for the child or children alone, or for the benefit of the wife for life, and of the children after her death, or for the benefit of the wife, and in case of her death during the life of the insured, then for the child or children, or any of them, or although a prior declaration was so restricted; and he may also apportion the insurance money among the persons intended to be benefited; and may, from time to time, by an instrument in writing attached to or endorsed on the policy, or referring to the same, alter the apportionment as he deems proper; he may also, by his will, make or alter the apportionment of the insurance money; and an apportionment made by his will shall prevail over any other made before the date of the will, except so far as such other apportionment has been acted on before notice of the apportionment by the will.

(2) This section applies to policies heretofore issued, as well as to future policies. 50 V. c. 7, s. 14.

Scott v. Scott, 20 O. R. 318; *re* Cameron, Mason v. Cameron, Ch. Div. Feb. 1892, 21 O. R. 694; *re* Lynn, Lynn v. Toronto General Trusts Co., 20 O. R. 475; Mingeaud v. Packer, *et al.*, 21 O. R. 267; see also, Portland v. Topham, L. R. 11 H. of L. 54; Thacker v. Key, L. R. 8 Eq. 414: The assured may at pleasure vary the trusts and reapportion the policy moneys, always subject to this reservation, however, that he cannot so deal with the trusts under the policy as to convert them into resulting trusts for himself.

53 Vic. c. 39, s. 5.

Life insurance for benefit of mother.

Insurance moneys to be a trust for the mother

5. Any person, either by the original contract of life insurance, or by indorsement thereon or otherwise, as provided in section 6 of the Principal Act, may make his or her mother a beneficiary or the sole beneficiary, under the contract, and may, as in the said section provided, vary the apportionment; and such contract shall create a trust in favor of the mother accordingly; and the moneys payable to the mother under any such contract shall not, so long as the trust remains unperformed, form part of the estate of the insured or be subject to his or her debts.

7. (1) Where no apportionment is made, all persons entitled to be benefited by the insurance shall be held to share equally in the same; and where it is stated in the policy or declaration that the insurance is for the benefit of the wife and children generally, or of the children generally, without specifying the names of the children, the word "children" shall be held to mean all the children of the insured living at the maturity of the policy, whether by his then or any former wife, and the wife to benefit by the policy shall be the wife living at the maturity thereof.

R. S. O.  
C. 136, s. 7.  
Where no  
apportion-  
ment is  
made.

For definition of "maturity of the policy," see 55 V. c. 39, s. 2 (15) *supra*. See *Dale v. Ontario Mutual Life*, in Chambers, Dec. 15, 1891, as to two women claiming each to be wife of assured. In *Mearns v. Ancient Order of United Workmen*, the assured while a widower with two children made the policy payable to his "legal heirs." On a special case stated (before Ferguson, J., April 19, 1892), held that the children took the entire fund to the exclusion of the plaintiff who married the assured subsequently.

(2) Any such policy may be surrendered or assigned (a), where the policy is for the benefit of children only, and the children surviving are all of the full age of twenty-one years, if the person insured and all such surviving children agree to so surrender or assign; or

(b) Where the policy is for the benefit of both a wife and children, and the surviving children are all of the full age of twenty-one years, if the person insured, and his then wife (if any) and all such surviving children agree to so surrender or assign; or

(c) Where the policy is for the benefit of a wife only, or of a wife and children, and there are no children living, if the person insured, and his then wife agree to so surrender or assign. 47 V. c. 20, s. 7; 48 V. c. 28, s. 1.

8. Where an apportionment, as in sections 2, 3 and 6 provided for, has been made, if one or more of the persons in whose favour the apportionment has been made die in the lifetime of the insured, the insured may, by an instrument in writing, attached to or endorsed on, or otherwise referring to and identifying the policy of insurance; declare that the share formerly apportioned to the person so dying shall be for the benefit of such other person or persons as he may name in that behalf, not being other than the wife and children of the insured, or one or more of them; and in default of any such declaration, the share of the person so dying shall be the property of the insured, and may be dealt with and disposed of by him as he may see fit, and shall at his death form part of his estate. 47 V. c. 20, s. 8; 48 V. c. 28, s. 5.

Provision  
as to share  
of any  
beneficiary  
dying  
where  
apportion-  
ment  
made.

R. S. O.  
c. 136, s. 9.

Provision  
in case of  
death of  
persons  
entitled  
where no  
apportion-  
ment  
made.

Apportion-  
ment after  
death of  
all persons  
entitled.

9. Where no apportionment, as in sections 2, 3 and 6 provided for, has been made, if one or more of the persons entitled to the benefit of the insurance die in the lifetime of the insured, and no apportionment is subsequently made by the insured, the insurance shall be for the benefit of the survivor, or of the survivors of such persons in equal shares if more than one; and if all the persons so entitled die in the lifetime of the insured, the policy and the insurance money shall form part of the estate of the insured; or after the death of all the persons entitled to such benefit, the insured may, by an instrument executed as aforesaid, make a declaration that the policy shall be for the benefit of his then or any future wife or children, or some or one of them. 47 V. c. 20, s. 9; 48 V. c. 28, s. 5.

M. effected a policy on his life for benefit of a daughter who married plaintiff, and predeceased M., bequeathing her interest in the policy to plaintiff. M. married defendant and died intestate. Held, affirming the judgment of Ferguson, J., 10 O. R. 288, that the insurance money formed part of the personal estate of M., and as such was payable to the defendant. *Wicksteed v. Munro*, 18 A. R. 486.

s. 10.

Insurance  
money not  
liable to  
creditors.

10. (1) When the insurance money becomes due and payable, it shall be paid according to the terms of the policy, or of any declaration or instrument as aforesaid, as the case may be, free from the claims of any creditors of the insured, except as herein provided.

(2) Where the insurance money, or part thereof, is for the benefit, in whole or in part, of the children of the insured, and the children are mentioned as a class and not by their individual names, the money shall not be payable to the children until reasonable proof is furnished to the company of the number, names and ages of the children entitled. 47 V. c. 20, s. 10.

s. 11.

Appoint-  
ment of  
trustees.

11. The insured may, by the policy or by his will, or by any writing under his hand, appoint a trustee or trustees of the money payable under the policy, and may from time to time revoke such appointment in like manner, and appoint a new trustee or new trustees and make provision for the appointment of a new trustee or new trustees, and for the investment of the moneys payable under the policy. Payment made to such trustee or trustees shall discharge the company. 47 V. c. 20, s. 11.

On the appointment of a trustee to receive insurance moneys for infant, see *re Thin*, 10 P. R. 490. The following form of appointment may be used:



I, A. B. , the person insured by policy number  
 issued by the Insurance Company, do  
 hereby, pursuant to the statute in that behalf, appoint  
 and trustees to receive all moneys  
 payable under said policy to my children who may be under age  
 when the same becomes payable

Witness: } Executed in duplicate this  
 day of 189.

**12.** If no trustee is named in the policy, or appointed as mentioned R. S. O.  
 in section 11, to receive the shares to which infants are entitled, their c. 136, s. 12.  
 shares may be paid to the executors of the last will and testament of Where no  
 the insured, or to a guardian of the infants duly appointed by one of trustee  
 the Surrogate Courts of this Province, or by the High Court, or to a payment  
 trustee appointed by the last named Court, upon the application of the of shares  
 wife, or of the infants or their guardian; and such payment shall be a of infants.  
 good discharge to the insurance company. 47 V. c. 20, s. 12. *See page 570*

See Merchants Bank v. Monteith, *ex parte* Standard Life  
 Ass. Co., 10 P. R. 588.

The following provisions govern the payment of life insur-  
 ance moneys where the beneficiary is resident elsewhere than  
 in Ontario:

**137.** (1) Where, under a policy of life insurance issued by an insur- R. S. O.  
 ance company whose head office is in this Province, the money is pay- 1887, c.  
 able to the representatives of a person who at the time of his death was 167, s. 137  
 domiciled or resident in any part of the Dominion of Canada other than (1), as  
 Ontario and Quebec, or in the Province of Newfoundland, and no person amended  
 has become his personal representative in this Province, the money may, by 51 Vic.  
 after the expiration of two months after such death, be paid to the c. 25 and  
 personal representative appointed by the Court of the Province in which by 52 Vic.  
 the deceased was resident or domiciled at the time of his death; provided c. 32, s. 7.  
 it appears upon the probate or letters of administration, or other like  
 document of such Court, or by a certificate of the Judge under the seal  
 of the Court, that it had been shewn to the satisfaction of the Court  
 that the deceased at the time of his death was domiciled or resident at  
 some place within the jurisdiction of such Court.

(a) Where the policy provides that the insurance money may be paid (a) added  
 to the personal representative appointed by the Court of the Province in by 51 Vic.  
 which the deceased was resident or domiciled at the time of his death, c. 25.  
 the money may be paid to such representative accordingly at any time  
 after the death aforesaid, or according to the terms of the policy.

(b) added  
by 52 Vic.  
c. 32, s. 7.

(b) Where, under a contract of life insurance made in this Province, the insurance money is payable to the representatives of a person who, at the time of his death, was domiciled in the Province of Quebec, and died intestate, the money may—after the expiration of three months after such death, if no person has become his personal representative in this Province—be paid to the person or persons entitled, according to the laws of the Province of Quebec, to receive the money and give a discharge for the same, if such money were by the terms of the contract payable in Quebec.

Cf. *Boyce v. Phoenix Mutual*, 14 S. C. R. 729; *Pritchard v. Standard Life Assn.*, 7 O. R. 188.

(c) added  
by 62 Vic.  
c. 32, s. 7.

(c) Where, in the case of a contract such as in sub-division (b) mentioned, the deceased disposes of the money payable under the contract by a will, valid according to the laws of the province of Quebec, then such money may be paid at any time after death, or according to the terms of the contract in that behalf, to the person or persons entitled under such will to receive and give a valid discharge for money payable in Quebec.

s. 137 (2).

(2) This section applies to policies heretofore issued as well as to policies to be issued hereafter, and whether the death has occurred before the passing of this Act or not. 50 V. c. 7, s. 10.

R. S. O.  
c. 136, s. 13.

Invest-  
ment of  
shares of  
infants.

**13.** Any trustee named as provided for in the last preceding two sections, and any executor or guardian may invest the money received in government securities, or municipal debentures, or in mortgages of real estate, or in any other manner authorized by the will of the insured, or by the *Act respecting Trustees and Executors and the administration of Estates*, and may from time to time alter, vary and transpose the investments, and apply all or any part of the annual income arising from the share or presumptive share of each of the children, in or towards his or her maintenance and education, in such manner as the trustee, executor or guardian thinks fit, and may also advance to and for any of the children, notwithstanding his or her minority, the whole or any part of the share of the child of and in the money, for the advancement or preferment in the world, or on the marriage of such child. 47 V. c. 20, s. 13.

*The Trustee Act 1891*, 54 V. c. 19 (Ont.), repeals, s. 30 of R. S. O. 1887, c. 110, and makes new provision for the investment of trust funds. Compare *Ins. Corp. Act*, sections 29 (2) 63 (1).

**14.** A guardian appointed under section 12, shall give security to the satisfaction of the Court or Judge for the faithful performance of his duty as guardian, and for the proper application of the money which he may receive. Where the amount of the insurance money payable to a guardian of infants does not exceed \$400, and probate is sought in respect of a will for the sole purpose of obtaining insurance money to an amount not exceeding \$400, the fees payable on the appointment of said guardian or executor shall be \$4 and no more, and such fees shall be regulated in the manner prescribed by section 69 of *The Surrogate Courts Act*. 47 V. c. 20, s. 14.

Security by guardian.  
Fees where insurance not more than \$400.  
Rev. Stat. c. 50.

On security, see *re Thin*, 10 P. R. 490,

**15.** (1). If there is no trustee, executor or guardian competent to receive the share of any infant in the insurance money, and the insurance company admit the claim, or any part thereof, the company at any time after the expiration of two months from the date of their admission of the claim, or part thereof, may obtain an order from the High Court for the payment of the share of the infant into Court; and in such case the costs of the application shall be paid out of the share (unless the Court otherwise directs), and the residue shall be paid into Court pursuant to the order; and such payment shall be a sufficient discharge to the company for the money paid; and the money shall be dealt with as the Court may direct. 47 V. c. 20, s. 15.

s. 15 (1).  
Power to company to pay money into Court.

*McElheran v. The London Masonic Mutual Benefit Assoc.*, 11 P. R. 181, a case of interpleader as to amount due by a benefit society.

(2) If the company does not within four months from the time the claim is admitted, either pay the same to some person competent to receive the money under this Act, or pay the same into the High Court the said Court may upon application made by some one competent to receive the said money, or by some other person, on behalf of the infant, order the insurance money, or any part thereof, to be paid to any trustee, executor, or guardian competent to receive the same, or to be paid into Court to be dealt with as the Court may direct, and any such payment shall be a good discharge to the company.

s. 15 (2).

(3) The Court may order the costs of the application, and any costs incidental to establishing the authority of the party applying for the order, to be paid out of such moneys, or by the company, or otherwise, as may seem just, and the Court may also order the costs of, and incidental to, obtaining out of Court moneys voluntarily paid in by a company, to be paid out of such moneys. 48 V. c. 28, s. 3.

s. 15 (3).

## s. 16.

Power to  
surrender  
policy.

**16.** If a person who has heretofore effected, or who hereafter effects, an insurance for the purposes contemplated by this Act, whether the purpose appears by the terms of the policy, or by endorsement thereon, or by an instrument referring to and identifying the policy, finds himself unable to continue to meet the premiums, he may surrender the policy to the company, and accept in lieu thereof a paid up policy for such sum as the premiums paid would represent, payable at death, or at the endowment age, or otherwise (as the case may be), in the same manner as the money insured by the original policy if not surrendered would have been payable; and the company may accept the surrender and grant the paid-up policy, notwithstanding any declaration or direction in favour of the wife and children, or any, or either of them. 47 V. c. 20, s. 16.

## s. 17.

Power to  
borrow  
money on  
the policy.

**17.** The person insured may, from time to time, borrow from the company insuring, or from any other company or person, on the security of the policy such sums as may be necessary, and shall be applied, to keep the policy in force, and on such terms and conditions as may be agreed on; and the sums so borrowed, together with such lawful interest thereon as may be agreed, shall, so long as the policy remains in force, be a first lien on the policy and on all moneys payable thereunder, notwithstanding any declaration or direction in favour of the wife and children, or any or either of them. 47 V. c. 20, s. 17.

Cf. *Elliott v. Bussell*, 19 O. R. 418.

## s. 18.

Insured  
may direct  
application  
of bonuses  
and profits

**18.** Any person insured under the provisions of this Act, may, in writing, require the insurance company to pay the bonuses or profits accruing under the policy, or portions of the same, to the insured; or to apply the same in reduction of the annual premiums payable by the insured, in such way as he may direct; or to add the said bonuses or profits to the policy; and the company shall pay or apply such bonuses or profits as the insured directs, and according to the rates and rules established by the company; provided always, that the company shall not be obliged to pay or apply such bonuses or profits in any other manner than stipulated in the policy or the application therefor. This section applies to policies made before the 4th day of March, 1881, and to bonuses and profits then declared in respect of such policies, as well as to policies thereafter made and hereafter to be made. 47 V. c. 20, s. 18.

Proviso.

## s. 19.

As to  
actions  
for insur-  
ance  
money.

**19.** In case of several actions being brought for insurance money, the Court is to consolidate or otherwise deal therewith, so that there shall be but one action for and in respect of the shares of all the persons entitled under a policy. If an action is brought for the share of one or more infants entitled, all the the other infants entitled, or the trustees, executors or guardians entitled to receive payment of the shares of such other infants, shall be made parties to the action, and the rights of all

the infants shall be dealt with and determined in one action. The persons entitled to receive the shares of the infants may join with any adult persons claiming shares in the policy. In all actions when several persons are interested in the money, the Court or Judge shall apportion among the parties entitled any sum directed to be paid, and shall give all necessary directions and relief. 47 V. c. 20, s. 19.

Cf. *Campbell v. National Life Ins. Co.*, 84 U. C. R. 85; see also *Fraser v. Phoenix Mutual Life Ins. Co.*, 86 U. C. R. 422.

**20.** The provisions of sections 12, 15 and 19 of this Act, shall extend, s. 20. and are hereby declared to have been intended to extend, and apply to cases where the insured died before the 25th day of March, 1884, as well as to cases arising subsequent thereto. 48 V. c. 28, s. 4.

**21.** No declaration or apportionment affecting the insurance money, or any portion thereof, nor any appointment or revocation of a trustee made after the 25th day of March, 1884, shall be of any force or effect as respects the company, until the instrument or a duplicate or copy thereof, is deposited with the company. Where a declaration or endorsement has been heretofore made, and notice has not been given, the company may, until they receive notice thereof, deal with the insured or his executors, administrators or assigns, in respect of the policy, in the same manner and with the like effect, as if the declaration or endorsement had not been made. 47 V. c. 20, s. 20.

**22.** If the policy was effected and premiums paid by the insured, with intent to defraud his creditors, the creditors shall be entitled to receive out of the sum secured, an amount equal to the premiums paid. 47 V. c. 20, s. 21.

**23.** Nothing contained in this Act shall be held or construed to restrict or interfere with the right of any person to affect or assign a policy for the benefit of his wife or children, or some or one of them, in any other mode allowed by law. 47 V. c. 20, s. 22.

**24.** Where all the persons entitled to be benefited, whether by original insurance, by written declaration, or variation or instrument of apportionment, under any policy, are of full age, they and the person insured may surrender the policy, or assign the same, either absolutely or by way of security. 47 V. c. 20, s. 23.

s. 24 as amended by 51 Vic. c. 22, s. 4, and by 53 Vic. c. 89, s. 8.

Power of assured and adults to deal with policy

s. 25, as amended by 53 Vic. c. 39, s. 7. Who deemed person entitled to benefit of policy for purposes of section 24.

25. Where any policy of insurance, or the declaration endorsed upon or attached to, or identifying by its number or otherwise, any policy of insurance to which this Act applies, whether such declaration has heretofore been, or shall hereafter be made, provides that the policy shall be for the benefit of a person, and in the event of the death of such person, for the benefit of another person, such first mentioned person shall, if living, be deemed for the purposes of section 24 of this Act, the person entitled to be benefited under such policy. 48 V. c. 23, s. 2

(2) This section shall apply to policies heretofore issued as well as to future policies.

R. S. O. 1887, c. 167 (*The Ontario Insurance Act*) sections 114-119;

## STATUTORY CONDITIONS.

AND

## PROVISIONS RELATING THERETO.

Applicable to all fire insurance contracts whatsoever in Ontario.

See notes under section 38 (1) of *The Insurance Corporations Act*, *supra*.\*

R. S. O. c. 167. Statutory conditions to be part of every contract unless varied.

114. The conditions set forth in this section shall, as against the insurers, be deemed to be part of every contract, whether sealed, written or oral, of fire insurance hereafter entered into or renewed or otherwise in force in Ontario, with respect to any property therein or in transit therefrom or thereto, and shall be printed on every such policy with the heading *Statutory Conditions*; and no stipulation to the contrary, or providing for any variation, addition or omission, shall be binding on the assured unless evidenced in the manner prescribed by sections 115 and 116.

*The Insurance Corporations Act* (see *supra*) now enacts: -

\* As explained in the Preface, the space allotted to this Appendix has limited the commentary to brief notes on the Statutory Conditions as affected by subsequent legislation including *The Insurance Corporations Act*, 1892, and fuller treatment of this subject has been reserved for a separate manual.

83. (1) Where any insurance contract made by any corporation whatsoever within the intent of section 2 of this Act is evidenced by a sealed or written instrument, all the terms and conditions of the contract shall be set out by the corporation in full on the face or back of the instrument forming or evidencing the contract; and unless so set out, no term of, or condition, stipulation, warranty or proviso modifying or impairing the effect of any such contract made or renewed after the commencement of this Act shall be good or valid, or admissible in evidence to the prejudice of the assured or beneficiary.

Ins. Corp.  
Act, s. 33  
(1).  
Terms, etc.  
of contract  
invalid un-  
less set out  
in full.

Provided also that nothing in sub-sections 1, 2 and 3 of this section contained shall be deemed to impair the effect of the provisions contained in sections 114 to 118 inclusive of *The Ontario Insurance Act*, or the effect of the provisions contained in section 56 of an Act passed in the fifty-second year of Her Majesty and chaptered 83.

The latter Act here referred to enacts conditions binding contracts for the insurance of live stock.

Statutory condition 2, *infra*, in effect, makes the application for insurance part of the contract, so far as description and particulars of the property are concerned; but nothing amounting to a variation, addition, or omission, or stipulation contrary to the Statutory Conditions can be imported into the contract *via* the application. This *The Insurance Corporations Act* leaves unaltered.

### Statutory Conditions.

As provided by section 114 of *The Ontario Insurance Act* (see *supra*), the following 23 Conditions bind, as against the insurer, every contract of fire insurance, sealed, written or oral, entered into or renewed, or otherwise in force in the Province of Ontario. If the insurer desires to vary or omit any of these conditions, or to add new conditions, it must be done as prescribed by section 115 of *The Ontario Insurance Act*; see *infra*. The effect of not



printing the Statutory Conditions upon the instrument of contract, or printing upon the contract different conditions, except as permitted by the 115th section, is to make the contract, as against the insurer, subject to the Statutory Conditions only. *Parsons v. Citizens*, L. R. 7 App. Ca. 96.

Misrepresentation  
omission

11. If any person or persons insures his or their buildings or goods, and causes the same to be described otherwise than as they really are, to the prejudice of the company, or misrepresents or omits to communicate any circumstance which is material to be made known to the company, in order to enable it to judge of the risk it undertakes, such insurance shall be of no force in respect to the property in regard to which the misrepresentation or omission is made.

See notes to section 33 (2) of *The Insurance Corporations Act*, *supra*.

"Which is material." *The Insurance Corporations Act*, s. 33, (2), *see supra*—now enacts:

Ins. Corp.  
Act, s. 33  
(2).

Contract  
not to be  
invalidated  
by erroneous  
statement in  
application  
unless  
material.

(2) No contract of insurance made or renewed after the commencement of this Act shall contain, or have endorsed upon it, or be made subject to any term, condition, stipulation, warranty or proviso, providing that such contract shall be avoided by reason of any statement in the application therefor, or inducing the entering into of the contract by the corporation, unless such term, condition, stipulation, warranty or proviso is limited to cases in which such statement is material to the contract, and no contract within the intent of section 2 of this Act shall be avoided by reason of the inaccuracy of any such statement unless it be material to the contract.

The proviso cited above under sub-section (1) applies also to this sub-section.

As to determining what is material—that is to say, whether this is a question of law for the Judge or of fact for the jury,—our Courts have held that materiality is a question for the jury. *Parsons v. Citizens Ins. Co.*, 48 U. C. R. 271; *Klein v. Union Ins. Co.*, 3 O. R. at 256; *Samo v. Gore District Ins. Co.*, 2 S. C. R. 411; so that the following provision of *The Insurance Corporations Act*, s. 33 (3), only declares the law as settled by the foregoing and other cases:



(8) The question of materiality in any contract of insurance whatsoever shall be a question of fact for the jury, or for the court if there be no jury; and no admission, term, condition, stipulation, warranty or proviso to the contrary, contained in the application or proposal for insurance, or in the instrument of contract, or in any agreement or document relating thereto shall have any force or validity.

2. After application for insurance, it shall be deemed that any Policy sent to the assured is intended to be in accordance with the terms sent to be deemed as of the application, unless the company points out, in writing, the par- applied for unless variance pointed out. ticulars wherein the policy differs from the application.

This condition has been judicially considered in a number of cases. Among the most recent is *Smith v. City of London Ins. Co.*, 14 A. R. 928, affirmed by Supreme Court (1888) 15, S. C. R. 69.

As to the effect of the *Insurance Corporations Act* upon the condition, see note to Statutory Condition 1.

3. Any change material to the risk, and within the control or knowledge of the assured, shall avoid the policy as to the part affected thereby, unless the change is promptly notified in writing to the company or its local agent; and the company when so notified may return the premium for the unexpired period and cancel the policy, or may demand in writing an additional premium, which the assured shall, if he desires the continuance of the policy, forthwith pay to the company; and if he neglects to make such payment forthwith after receiving such demand, the policy shall be no longer in force.

When a change as to risk shall avoid a policy. Notice of change, etc.

"*Any Change.*" "Change" here means increase of risk. *Gill v. Canada Fire and Marine Ins. Co.*, 1 O. R. 841, *per Boyd, C.*, following *Wilson, C.J.*, in *Ottawa Forwarding Co. v. Liverpool, etc. Ins. Co.*, 28 U. C. R. 522.

"*Material to the risk.*" This Statutory Condition cannot be so varied under section 115 of the *Ontario Insurance Act* as to omit these qualifying words; *Butler v. Standard Fire Ins. Co.* 4 A. R. 391, affirming *Spragge, C.*, (26 Grant 641); as to the determination of the question of materiality, see notes to Statutory Condition 1.

Change of  
property.

4. If the property insured is assigned without a written permission endorsed hereon by an agent of the company duly authorized for such purpose, the policy shall thereby become void; but this condition does not apply to change of title by succession, or by the operation of the law, or by reason of death.

Partial  
damage—  
salvage.

5. When property insured is only partially damaged, no abandonment of the same will be allowed unless by the consent of the company or its agent; and in case of the removal of property to escape conflagration, the company will contribute to the loss and expenses attending such act of salvage proportionately to the respective interests of the company or companies and the assured.

*"No abandonment of the same will be allowed," etc.* But by taking "the disposition, control, occupation, or possession of the insured property, or of the remains or salvage thereof," the insurer (in the absence at all events of special agreement to the contrary) will be held to have either undertaken reinstatement or accepted abandonment of the property. *Insurance Corporations Act*, s. 33 (4), see *supra* with notes thereon.

Money,  
securities,  
etc.

6. Money, books of account, securities for money, and evidences of debt or title are not insured.

Plate,  
paintings,  
clocks, etc.

7. Plate, plate glass, plated ware, jewelry, medals, paintings, sculptures, curiosities, scientific and musical instruments, bullion, works of art, articles of vertu, frescoes, clocks, watches, trinkets and mirrors, are not insured unless mentioned in the policy.

Prior or  
subsequent  
insurance.

8. The company is not liable for loss if there is any prior insurance in any other company, unless the company's assent thereto appears herein or is endorsed hereon, nor if any subsequent insurance is effected in any other company, unless and until the company assents thereto, or unless the company does not dissent in writing within two weeks after receiving written notice of the intention or desire to effect the subsequent insurance, or does not dissent in writing after that time and before the subsequent or further insurance is effected.

Case of  
assent to  
other  
insurance.

9. In the event of any other insurance on the property herein described having been assented to as aforesaid, then this company shall, if such other insurance remains in force, on the happening of any loss or damage, only be liable for the payment of a ratable proportion of such loss or damage without reference to the dates of the different policies.

**10. The company is not liable for the losses following, that is to say:**

(a) For loss of property owned by any other party than the assured, unless the interest of the assured is stated in or upon the policy; Liability in case of non-ownership.

(b) For loss caused by invasion, insurrection, riot, civil commotion, military or usurped power; Riot, Invasion, etc.

(c) Where the insurance is upon buildings or their contents—for loss caused by the want of good and substantial brick or stone chimneys; or by ashes or embers being deposited, with the knowledge and consent of the assured, in wooden vessels; or by stoves or stove-pipes being, to the knowledge of the assured, in an unsafe condition or improperly secured; Chimneys, ashes, stoves.

(d) For loss or damage to goods destroyed or damaged while undergoing any process in or by which the application of fire heat is necessary; Goods to which fire heat is being applied.

(e) For loss or damage occurring to buildings or their contents while the buildings are being repaired by carpenters, joiners, plasterers or other workmen, and in consequence thereof, unless permission to execute such repairs had been previously granted in writing, signed by a duly authorized agent of the company. But in dwelling houses fifteen days are allowed in each year for incidental repairs, without such permission; Repairs by carpenters, etc.

(f) For loss or damage occurring while petroleum, rock, earth or coal oil, camphene, gasoline, burning fluid, benzine, naphtha or any liquid products thereof, or any of their constituent parts (refined coal oil for lighting purposes only, not exceeding five gallons in quantity, or lubricating oil not being crude petroleum nor oil of less specific gravity than required by law for illuminating purposes, not exceeding five gallons in quantity, excepted), or more than twenty-five pounds weight of gunpowder is or are stored or kept in the building insured or containing the property insured, unless permission is given in writing by the company. Gunpowder, coal oil, etc.

**11. The company will make good loss caused by the explosion of coal gas in a building not forming part of gas works, and loss by fire caused by any other explosion or by lightning.** Explosion. Lightning.

**12. Proof of loss must be made by the assured, although the loss be payable to a third party.** Proof of loss when payable to other than assured.

**13. Any person entitled to make a claim under this policy is to observe the following directions:** Directions to be observed on making claim.

(a) He is forthwith after loss to give notice in writing to the company;

(b) He is to deliver, as soon afterwards as practicable, as particular an account of the loss as the nature of the case permits;

(c) He is also to furnish therewith a statutory declaration, declaring,

- (1) That the said account is just and true; .
- (2) When and how the fire originated, so far as the declarant knows or believes;
- (3) That the fire was not caused through his wilful act or neglect, procurement, means or contrivance;
- (4) The amount of other insurances;
- (5) All liens and incumbrances on the subject of insurance; ~
- (6) The place where the property insured, if movable, was deposited at the time of the fire.

(d) He is in support of his claims, if required and if practicable, to produce books of account, warehouse receipts and stock lists, and furnish invoices and other vouchers; to furnish copies of the written portion of all policies; to separate as far as reasonably may be the damaged from the undamaged goods, and to exhibit for examination all that remains of the property which was covered by the policy.

(e) He is to produce, if required, a certificate under the hand of a magistrate, notary public, commissioner for taking affidavits, or municipal clerk, residing in the vicinity in which the fire happened, and not concerned in the loss or related to the assured or sufferers, stating that he has examined the circumstances attending the fire, loss or damage alleged, that he is acquainted with the character and circumstances of the assured or claimant, and that he verily believes that the assured has by misfortune and without fraud or evil practice sustained loss and damage on the subject assured, to the amount certified.

The rights of the insurer and the duties of the assured, after loss or damage to the insured property; are now more precisely defined by *The Insurance Corporations Act*, s. 33 (4), as follows:

*Ins. Corp.  
Act, s. 33,  
(4).*

*Insurer's  
right of  
entry after  
loss.*

(4) After any loss or damage to insured property, the insurer corporation, called hereinafter the insurer, has by a duly accredited agent an immediate right of entry and access sufficient to survey and examine the property, and make an estimate of the loss or damage; but the insurer is not entitled to the disposition, control, occupation, or possession of the insured property, or of the remains or salvage thereof, unless the insurer undertakes reinstatement, or accepts abandonment of the property.

After any loss or damage to insured property, it is the duty <sup>Duty of assured after loss.</sup> of the assured when, and as soon as practicable to secure the insured property from damage, or from further damage, and to separate as far as reasonably may be, the damaged from the undamaged property, and to notify the insurer when such separation has been made; and thereupon the insurer shall be entitled to entry and access sufficient to make an appraisalment or particular estimate of the loss or damage:

Provided that at any time after the loss or damage the <sup>Proviso.</sup> insurer and the assured may, under a term of the contract of insurance or by special agreement, make a joint survey, examination, estimate, or appraisalment of the loss or damage, in which case the insurer shall be deemed to have waived all right to make a separate survey, examination, estimate, or appraisalment thereof.

For notes see the Act, *supra*.

The Act does not make these provisions a Statutory Condition; it is not therefore obligatory upon a Fire Insurance Company to print them upon its policy. But it is important for many reasons to bring under the attention of the assured, the duty cast upon him by the law. This may be done (where new forms of policies are being prepared) by printing the above subsection upon the policy after the Statutory Conditions (and "Variations" thereof, if any).

When the assured has wilfully neglected or unreasonably refused to furnish necessary information, the Act, 52 V. c. 31, now enables (s. 4), the insuring company to counter-claim as follows:—

(4) "If in any action or proceeding upon a contract of fire insurance, the insured being plaintiff in such a claim or proceeding, has in the opinion of the Court or Judge, wilfully neglected or unreasonably refused to furnish necessary information respecting the property for which the insurance money is claimed, and if as a consequence of such neglect or refusal the defendant company has been at expense in obtaining information or evidence, the Court or Judge may in disposing of costs, take into consideration the expense so incurred by the defendant company."

52 Vic. c. 31, s. 4.  
Allowance for costs occasioned by default of plaintiff.

For the case of deficiency of proof arising not from wilful neglect or unreasonable refusal on the part of the claimant, see section 118 of the *Ontario Insurance Act*, *infra*.

Proof of loss may be made by agent.

**14.** The above proofs of loss may be made by the agent of the assured, in case of the absence or inability of the assured himself to make the same, such absence or inability being satisfactorily accounted for.

False statement or fraud vitiates claim.

**15.** Any fraud or false statement in a statutory declaration, in relation to any of the above particulars, shall vitiate the claim.

Where sufficient reason exists for suspecting fraud, or for impeaching the claimant's statement of his loss, proceedings may be taken under the following provisions of *The Ontario Insurance Act*, R. S. O. 1887, c. 167, s. 120:

Ont. Ins. Act, s. 120. Justices of Peace, etc., may swear and examine witnesses regarding loss.

**120. (1)** Any Justice of the Peace, or any one having lawful authority to administer an oath or affirmation in any legal proceeding, may examine on oath or solemn affirmation any party or person who comes before him to give evidence touching any loss by fire in which any Fire Insurance Company is interested, and may administer any oath or affirmation required under this Act.

May hold special investigation on request.

**(2)** On receiving a written request from any officer or agent of any insurance company with security for the expenses of an investigation, any Justice of the Peace may at once proceed to hold an investigation as to the origin or cause of any fire that has happened within his county or district, and as to the persons, if any, profiting thereby.

Powers.

**(3)** The Justice of the Peace shall have power to send for persons and papers, and to examine all persons that appear before him on oath or solemn affirmation; and he shall keep a record of all such proceedings and of the evidence given before him."

A statute of 1891, 54 V. c. 37, gives the Justice of the Peace, acting under the above section, power to summon, bring before him and examine any person whom he deems capable of giving information or evidence concerning the fire. The statute also empowers the Lieutenant-Governor in Council to appoint

special functionaries, known as Provincial Coroners, for the purpose of holding fire investigations; but before the coroner can enter on any investigation under the Act, he must obtain the consent in writing of either the Attorney-General or County Attorney for the County wherein the investigation is proposed to be held. The text of these provisions is as follows:

1. (1) It shall be lawful for the Lieutenant-Governor in <sup>51 V. c. 37, s. 1.</sup> Council to appoint from time to time, under the Great Seal, Provincial Coroners, each of whom shall be, by virtue of his <sup>Appointment of Provincial Coroners to hold fire investigations.</sup> appointment, both a coroner and a justice of the peace for every county and part of Ontario, for purposes of holding fire investigations.

(2) The fees payable to a Provincial Coroner shall be as <sup>Fees of provincial coroners.</sup> enacted by section 7, of chapter 217, of the Revised Statutes of Ontario, 1887.

(3) Before any Provincial Coroner shall enter on any investigation under this Act, he shall obtain the consent in writing of <sup>Assent of Atty.-Gen. or County Attorney required.</sup> either the Attorney-General or county attorney for the county wherein the investigation is proposed to be held.

(4) This section shall be construed as one with chapters 80, <sup>Incorporation of provisions with prior enactment.</sup> 83 and 217, and section 120 of chapter 167 of the Revised Statutes of Ontario, 1887.

(5) For purposes of any investigation held under the last-named section, the Provincial Coroner, or a justice of the peace <sup>Powers of provincial coroners, etc.</sup> may summon and bring before him any person whom he deems capable of giving information or evidence touching or concerning the fire, and may examine such persons on oath; and he shall reduce such examinations to writing, and return the same to the clerk of the peace for the district or county within which they have been taken, and the fees payable to a justice of the peace in respect of such investigation shall be as herein enacted for a Provincial Coroner.

See also R. S. O. 1887, c. 217. *An Act respecting the Investigation of Accidents by Fire*, which is to be read with the above provisions.



Arbitra-  
tion in case  
of differ-  
ences.

**16.** If any difference arises as to the value of the property insured, of the property saved, or amount of the loss, such value and amount and the proportion thereof (if any) to be paid by the company, shall, whether the right to recover on the policy is disputed or not, and independently of all other questions, be submitted to the arbitration of some person to be chosen by both parties, or if they cannot agree on one person, then to two persons, one to be chosen by the party assured and the other by the company, and a third to be appointed by the persons so chosen, or on their failing to agree, then by the County Judge of the county wherein the loss has happened; and such reference shall be subject to the provisions of the laws applicable to references in actions; and the award shall, if the company is in other respects liable, be conclusive as to the amount of the loss and proportion to be paid by the company; where the full amount of the claim is awarded the costs shall follow the event and in other cases, all questions of costs shall be in the discretion of the arbitrators.

Loss when  
payable.

**17.** The loss shall not be payable until \_\_\_\_\_ days after completion of the proofs of loss, unless otherwise provided for by the contract of insurance.

(a) The blank shall be filled in the case of mutual and cash mutual companies with the word "sixty," and in the case of other companies, with the word "thirty."

Formerly, the law was that mutual companies had ninety days for the payment of claims, and they in their turn gave their members sixty days to pay assessments. This led to most vexatious delays in the settlement of claims. Now the law is sixty days for the payment of the claim by the company, and thirty days for the payment of the assessment to the company. To remove doubts on this latter question, 53 V. c. 44, s. 4, enacts as follows:—

53 Vic. c.  
44, s. 4.  
Rev. Stat.  
c. 167, s.  
132.

Return of  
premium  
note after  
insurance  
ended.

"4. To remove doubts, section 132 of the said Act is repealed and the following section substituted therefor,—132. On the expiration of forty days after the term of insurance ended, the premium note or undertaking given for the term shall be absolutely null and void, except as to first payment or instalments thereof remaining unpaid, and except as to lawful assessments of which written notice pursuant to sections 124 and 126 has been given to the maker of the premium note or undertaking during the currency of the policy or within the said period of forty days; and, on the expiration of the said period, the premium



note or undertaking shall, upon application therefor, be given up to the maker thereof, provided all liabilities with which the premium note or undertaking is chargeable as aforesaid have been paid."

The same Act by s. 2 greatly facilitates in mutual companies the payment of fixed premiums instead of resorting to the uncertain expedient of intermittent assessments:—

"2. Section 123 of the said Act is amended by adding thereto the following sub-section:—

(2) Instead of requiring the whole of the first payment to be made in cash at the time of insuring, the directors may make the said sum payable in annual instalments, the first of which shall be payable on the day of insuring, and the remaining instalments shall be respectively payable on the first day of each subsequent year of the term of insurance.

53 Vic. c.  
44, s. 2.  
Rev. Stat.  
c. 167, s.  
123, am-  
ended.

First pay-  
ment on  
premium  
note may  
be made in  
instal-  
ments.

Provided that non-payment of any of the instalments subsequent to the first shall not forfeit the insurance unless thirty days' notice of the instalment due, or to become due, has been mailed to the person by whom the instalment is payable, directed to his post office address as given in his original application, or otherwise in writing to the company.

Proviso.

18. The company, instead of making payment, may repair, rebuild or replace, within a reasonable time, the property damaged or lost, giving notice of their intention within fifteen days after receipt of the proofs herein required.

Company  
may re-  
place  
instead of  
paying.

The company unintentionally becomes bound to reinstate if it undertakes "the disposition, control, occupation or possession of the insured property, or of the remains or salvage thereof"; or by such dealing with the property the company may be held to have accepted abandonment, and may thus become liable as for a constructive total loss: *Insurance Corporations Act, 1892*, s. 33 (4); see the section, *supra*, and notes thereon.

19. The insurance may be terminated by the company by giving notice to that effect, and, if on the cash plan, by tendering therewith a ratable proportion of the premium for the unexpired term, calculated

Insurance  
terminable  
on notice.

from the termination of the notice; in the case of personal service of the notice five days' notice, excluding Sunday, shall be given. Notice may be given by any company having an agency in Ontario by registered letter addressed to the assured at his last post-office address notified to the company, and where no address notified, then to the post-office of the agency from which application was received, and where such notice is by letter, then seven days from the arrival at any post-office in Ontario shall be deemed good notice. And the policy shall cease after such tender and notice aforesaid, and the expiration of the five or seven days as the case may be.

(a) The insurance, if for cash, may also be terminated by the assured by giving written notice to that effect to the company or its authorized agent, in which case the company may retain the customary short rate for the time the insurance has been in force, and shall repay to the assured the balance of the premium paid.

Waiver of condition.

**20.** No condition of the policy, either in whole or in part shall be deemed to have been waived by the company, unless the waiver is clearly expressed in writing, signed by an agent of the company.

Officers assuming to agree in writing to be deemed agents.

**21.** Any officer or agent of the company, who assumes on behalf of the company to enter into any written agreement relating to any matter connected with the insurance, shall be deemed *prima facie* to be the agent of the company for the purpose.

Actions to be brought within one year.

**22.** Every action or proceeding against the company for the recovery of any claim under or by virtue of this policy, shall be absolutely barred, unless commenced within the term of one year next after the loss or damage occurs.

What constitutes written notice.

**23.** Any written notice to a company for any purpose of the statutory conditions, where the mode thereof is not expressly provided, may be by letter delivered at the head office of the company in Ontario, or by registered post letter addressed to the company, its manager or agent, at such head office, or by such written notice given in any other manner to an authorized agent of the company. 50 Vic. c. 26, s. 114.

Variations, how indicated.

**115.** If a company (or other insurer) desires to vary the said conditions, or to omit any of them, or to add new conditions, there shall be added on the instrument of contract containing the printed statutory conditions words to the following effect, printed in conspicuous type and in ink of different colour:—

“VARIATIONS IN CONDITIONS.

“This policy is issued on the above Statutory Conditions, with the following variations and additions:—

“These variations (or as the case may be) are, by virtue of the Ontario Statute in that behalf, in force so far as by the Court or Judge before whom a question is tried relating thereto, they shall be held to be just and reasonable to be exacted by the company.” 50 Vic. c. 26, s. 115.

"In ink of different colour." It is the custom to print the Statutory Conditions in black, and the Variations in red ink.

"VARIATIONS IN CONDITIONS." Here the title "VARIATIONS" includes *added conditions*. *Reddick v. Saugeen, etc., Ins. Co.*, 15 A. R. 868.

**116.** No such variation, addition or omission shall, unless the same is distinctly indicated and set forth in the manner or to the effect aforesaid, be legal and binding on the assured; and no question shall be considered as to whether any such variation, addition or omission is, under the circumstances, just and reasonable, but on the contrary, the policy shall, as against the insurers, be subject to the Statutory Conditions only, unless the variations, additions or omissions are distinctly indicated and set forth in the manner or to the effect aforesaid. 50 Vic. c. 26, s. 116.

**117.** In case a policy is entered into or renewed containing or including any condition other than or different from the conditions set forth in section 114, if the said condition so contained or included is held, by the Court or Judge before whom a question relating thereto is tried, to be not just and reasonable, such condition shall be null and void. 50 Vic. c. 26, s. 117.

**118.** Where, by reason of necessity, accident or mistake, the conditions of any contract of fire insurance on property in this Province as to the proof to be given to the insurance company after the occurrence of a fire have not been strictly complied with; or where, after a statement or proof of loss has been given in good faith by or on behalf of the assured, in pursuance of any proviso or condition of such contract, the company, through its agent or otherwise, objects to the loss upon other grounds than for imperfect compliance with such conditions, or does not within a reasonable time after receiving such statement or proof notify the assured in writing that such statement or proof is objected to, and what are the particulars in which the same is alleged to be defective, and so from time to time; or where, for any other reason, the Court or Judge before whom a question relating to such insurance is tried or inquired into, considers it inequitable that the insurance should be deemed void or forfeited by reason of imperfect compliance with such conditions—no objection to the sufficiency of such statement or proof or amended or supplemental statement or proof (as the case may be) shall, in any of such cases, be allowed as a discharge of the liability of the

Variations not binding unless clearly indicated.

Policy containing other than statutory conditions.

If due proof of loss not given through accident etc., or objection not made thereto, or made on other grounds than non-compliance with conditions.

or, if full compliance adjudged inequitable in above cases, liability and policy not vacated

company on such contract of insurance wherever entered into. 50 Vic. c. 26, s. 118.

As to wilful neglect or unreasonable refusal of the claimant to furnish necessary information as to the loss, see notes under Statutory Condition 18, *supra*.

Appeal.

**119.** A decision of a Court or Judge under this Act shall be subject to review or appeal to the same extent as a decision by such Court or Judge in other cases. 50 Vic c. 26, s. 119

nto. 50 Vic.

the claimant  
notes under

ll be subject  
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APPENDIX B.

FORMS TO BE USED

UNDER

THE INSURANCE CORPORATIONS ACT, 1892.

*(Prescribed by the Ontario Department of Insurance.)*

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BIBLIOTHEQUE DE DROIT

112

6

[illegible]

# APPENDIX B.

## FORM NO. 1.

### APPLICATION TO BE REGISTERED AS INSURANCE LICENSEE.

[MEMORANDA; Prefixed by the department of Insurance to the application of an Insurance Licensee for Registry.—(1) In the case of Licensees transacting insurance in the Province of Ontario, on or before the 30th June, 1892, and applying for Registry under the *INSURANCE CORPORATIONS ACT, 1892*, Applications are required to be made and completed on or before the said day, by means of the following printed form, which is to be accurately filled in and sworn to by the proper officer of the Applicant Body, and is to have the required Exhibits annexed thereto after being properly marked by the Notary or Commissioner before whom the affidavit is taken.

- (2) Application or Registration Fees are not receivable at the Insurance Department, but are to be paid to the Treasury Department. Letters transmitting such fees should be addressed to the Assistant Provincial Treasurer, Parliament Buildings, Toronto, and the remittance should be made by Post Office order, bank draft, or accepted cheque payable to the order of the Provincial Treasurer of Ontario. The Provincial Treasury will issue a receipt in duplicate; the duplicate is to be annexed as an exhibit to the Application for Registry.
- (3) The following Application is to be made in duplicate, and the duplicate should be marked "Duplicate Original" and completed in all respects as this form requires.

### PROVINCE OF ONTARIO.

### Application for Registry as an Insurance Licensee

MADE TO THE INSPECTOR OF INSURANCE FOR ONTARIO

PURSUANT TO

THE INSURANCE CORPORATIONS ACT, 1892.

1. *By this Application* made in duplicate this..... Name of  
day of..... A.D. 189... the..... applicant  
.....hereinafter called the Applicant licensee.

Body hereby applies for admission to registry under the provisions of the *Insurance Corporations Act, 1892*, hereinafter called the Act. (a)

How originally organized or incorporated.

2. The Applicant Body was lawfully [*here state fully when, where, and by what instrument or instruments, the Applicant Body was for purposes of insurance originally organized or incorporated.*] (b)

and the documents evidencing the same are filed or deposited in the..... at ..... of which the documents enumerated in the Schedule to this paragraph and annexed to this Application as Exhibits, numbered from..... to.....are hereby declared to be true copies.

#### SCHEDULE OF DOCUMENTS.

Schedule of documents.

EXHIBIT No.	TITLE OR DESCRIPTION OF INSTRUMENT.	DATE OF INSTRUMENT.	REMARKS.

By what authority organization or incorporation effected.

8. The said [organization or incorporation, as the case may be] .....was [effected, or validated or aided, as the case may be].....by or under the following special or private Acts and public general Statutes respectively:—

(a) Section 12 (1).

(b) Every licensee licensed under or by virtue of *The Insurance Act of Canada* is deemed to be a corporation for the purpose of registration. Section 6 (2).



LEGISLATURE.	YEAR AND CHAP- TER.	TITLE OF ENACTMENT.	WHETHER SPECIAL ACT OR PUBLIC GENERAL ACT.	WHETHER STILL IN FORCE.	EXHIBIT No.

Of the foregoing enactments (not being expired or repealed, nor being enactments of the Province of Ontario, nor of the Dominion of Canada, nor public general statutes of the United Kingdom) the annexed Exhibits numbered..... to..... are hereby declared to be true copies.

4. The Legislative enactments by which the powers, duties, rights and obligations of the Applicant Body are now declared, defined, limited or governed are the following:—

Enact-  
ments now  
governing  
applicant.

LEGISLATURE.	YEAR AND CHAP- TER.	TITLE OF ENACTMENT.	WHETHER SPECIAL ACT OR PUBLIC GENERAL ACT.	WHETHER STILL IN FORCE.	EXHIBIT No.

Of the enactments in this paragraph mentioned (not being enactments already specified in paragraph 3, nor enactments of the Province of Ontario, nor of the Dominion of Canada, nor public general statutes of the United Kingdom) the annexed exhibits numbered..... to..... are hereby declared to be true copies.

5. The original corporate or collective name of the Applicant Body was

Original  
name.

6. [If name has been altered, expunge this paragraph and fill up paragraph 7.] The said original corporate or collective name of the Applicant Body has remained unaltered to the date of this application.

No change  
in name.

Change in  
name.

7. [If name has not been altered, expunge this paragraph.]  
The original corporate or collective name of the Applicant Body  
was successively altered as follows:—

DATE OF ALTERATION.	NEW NAME.	AUTHORITY FOR CHANGE OF NAME.

Present  
full name.

8. The present full corporate or collective name of the  
Applicant Body is

Registry  
name.

9. The Applicant Body hereby applies to be registered, sub-  
ject to the Act, upon the Insurance License Register under the  
following name:—(c)

Head  
Office.

10. The Head Office (d) of the Applicant Body is at.....  
.....in the.....  
of..... and the Applicant Body can at  
the said Head Office lawfully sue and be sued in the name of  
[Here insert the proper corporate name for purposes of Action: or  
if the Applicant Body cannot sue and be sued under a corporate  
name, then insert the designation or designations of the officer or  
persons by or against whom action can lawfully be brought.]

11. [If the head office is elsewhere than in the Province of  
Ontario, fill in the particulars required by this and the next  
paragraph.]

Chief  
Agency.

The Chief Agency (e) of the Applicant Body in the Province  
of Ontario is at.....in the  
.....of.....

(c) No corporation shall be registered under a name identical with  
that under which any other existing corporation is registered, or so  
nearly resembling such name as to be likely, nor under any other name  
likely, in the opinion of the Registry Officer, to deceive the members  
or the public as to its identity. Section 23.

(d) "Head Office" means the place where the chief executive officers  
of the corporation transact its business. Section 2 (20).

(e) "Chief Agency" means the principal office or place of business in  
Ontario of an extra provincial corporation. Section 2 (21).

## Appendix B.

303

and the name and address of the Chief Agent for Ontario are <sup>Chief Agent</sup> as follows:

NAME.	ADDRESS.	ONTARIO.
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12. [See last paragraph.] The Attorney (*f*) in Ontario <sup>Attorney in Ontario.</sup> duly empowered by the Applicant Body to receive service of process or accept notice in its behalf as required by the Act is:—

NAME.	ADDRESS.	ONTARIO.
-------	----------	----------

And the Power of Attorney duly executed by the Applicant <sup>Power of Attorney.</sup> Body in this behalf is hereto annexed as Exhibit No.....; a duplicate also of the said Power of Attorney has been duly filed in the office of the Clerk of the Process at Osgoode Hall, in the City of Toronto. (*g*)

13. The members of the Applicant Body are related *inter se*, <sup>Relation of the members of the applicant body, *inter se*.</sup> as follows:

(i) [*Where there is a share capital, say:* The members <sup>(i) Where share capital</sup> certain of the members are related as shareholders in an..... incorporated joint stock company, *or as the case may be, with particulars*].

And the liability of the members is [*say, limited to the amount* <sup>Liability limited or unlimited.</sup> remaining unpaid upon the shares held by them, *or otherwise, as the case may be; state particulars.*]

Or (ii) [*Where the Applicant Body is a partnership or in the* <sup>(ii) Where partnership.</sup> nature thereof, *say:* The members are related as partners with the following special conditions or reservations, *if any: state particulars*]:

And the liability of the partners is [*say, general as to all, or* <sup>Liability of partners.</sup> limited as to certain partners, *as the case may be; state particulars*]:

(*f*) Section 14 (1).

(*g*) Section 15.

Of the instrument of partnership the Exhibit annexed to this application and numbered.....is hereby declared to be a true copy.

(iii) Where members of a mutual company.

Or (iii) [*Where the members or certain of the members of the Applicant Body are related as members of a Mutual Company; state the particulars.*] The members are :

and the liability of the members is [limited to..... or is unlimited, as the case may be; state particulars.]

(iv) Where members of an assessment society, etc.

Or (iv) [*Where the members of the Applicant Body are related as members of an assessment (h) society, association or company; state particulars.*]

The members are :

and the liability of the member is [limited to..... or is unlimited, as the case may be.]

(v) Where unclassified.

Or (v) [*Where the members of the Applicant Body are related in such manner as cannot be accurately classified under any of the foregoing heads; state particulars.*]

Guarantee capital.

14. [*Where guarantee capital or security exists; state particulars.*]

Particulars of license, etc.

15. The Applicant Body is now authorized by [License (i), or other document of authority, as the case may be; state particulars]

..... issued by the Dominion of Canada, bearing date the.....day of .....189.....and expiring on the.....day of.....189.....(j); and the said License authorizes the Applicant Body to transact the following Insurance ;

(h) See section 2 (14) for definition of assessment insurance.

(i) License includes the document of authority issued under either section 38 or section 39 of *The Insurance Act of Canada*. Section 4 (1).

(j) Section 18 (1).

And by virtue of the said license the Applicant Body in fact now transacts in the Province of Ontario the following insurance : (k)

The Exhibit numbered.....annexed to this Application is hereby declared to be a true copy of the said License (l).

16. The documents enumerated in the Schedule to this paragraph, and annexed to this application as Exhibits, numbered respectively from.....to.....comprise all forms of application and of contract (m), and all instruments intended to bind the insurer or the assured, now used by the Applicant Body or by any of its agents in Ontario.

Forms used by applicant for purposes of insurance contract.

#### SCHEDULE OF FORMS USED BY APPLICANT BODY FOR APPLICATIONS, CONTRACTS, Etc.

EXHIBIT No.	TITLE OR DESCRIPTION OF DOCUMENT.	REMARKS OR EXPLANATION.

17. Assets of the Applicant Body are deposited and held in various states or countries as special security for the policy holders respectively therein as follows:—

Assets deposited as security for policy-holders.

(1) In Canada :

Deposit accepted at the value of - \$.....held by.....  
Assets other than Deposit - - \$.....held by.....

(2) In other states or countries, viz. :

In.....Deposit accepted at - \$.....held by.....  
Assets other than Deposit \$.....held by.....

(k) Section 18 (2).

(l) Section 6 (1).

(m) Sections 2 (14), 33 (1), 33 (2), 36.

In.....Deposit accepted at - \$.....held by.....  
 Assets other than Deposit \$.....held by.....  
 In.....Deposit accepted at - \$.....held by.....  
 Assets other than Deposit \$.....held by.....  
 In.....Deposit accepted at - \$.....held by.....  
 Assets other than Deposit \$.....held by.....

18. In respect of this Application the application fee (n) of \$.....has been duly paid to the Provincial Treasury, and the [duplicate—original or a true copy, *as the case may be*]..... of the Treasury Receipt therefor numbered.....and dated .....189 , is hereto annexed as Exhibit No.....

Jurat.

PROVINCE OF ONTARIO. )

County of.....)

I, .....of.....  
 duly appointed to and now holding the office of.....  
 in the aforesaid Applicant Body, make oath and say that the present Application is made by me *bona fide* in behalf and by authority of the said Applicant Body; also that I have the means of verifying the correctness of this present Application; and that the facts and documents by the form of Application required to be stated and exhibited, are herein truly and fully stated and exhibited; also that no fact nor document material to be disclosed has been concealed or withheld.

SWORN before me (o) at the.....  
 in the County of.....  
 the.....day of.....  
 A.D. 189

(n) The application fees must be paid before the application is considered. For tariff of fees, see section 62.

(o) Affidavit may be sworn to before a Justice of the Peace, Notary Public or Commissioner of the High Court for taking affidavits. Section 47 (2).

## FORM NO. 2.

## TREASURY RECEIPT FOR APPLICATION FEE.

[ORIGINAL TO BE RETAINED BY APPLICANT.]

## Insurance Corporations Act, 1892.

## RECEIPT FOR APPLICATION FEE.

No.....

\$.....

Treasury Department, Ontario,

Toronto,.....189

*Received from* .....  
*the sum of* ..... *Dollars,*  
*being Fee for Application for Registry under Insurance Corporations*  
*Act, 1892.*

.....  
Assistant Treasurer.

[DUPLICATE ORIGINAL TO BE DEPOSITED WITH REGISTRY OFFICER.]

## Insurance Corporations Act, 1892.

## RECEIPT FOR APPLICATION FEE.

No.....

\$.....

Treasury Department, Ontario,

Toronto,.....189

*Received from* .....  
*the sum of* ..... *Dollars*  
*being Fee for Application for Registry under Insurance Corporations*  
*Act, 1892.*

.....  
Assistant Treasurer.

## FORM NO. 3.

## POWER OF ATTORNEY.\*

Made pursuant to the Statute of the Province of Ontario 55  
Victoria, Chapter 89. (*The Insurance Corpora-  
tions Act, 1892*).

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:—

(a) Name of  
the body  
applying  
for registry

**Whereas** the (a)

(aa) or "of  
entering  
into con-  
tracts of  
benefit in-  
surance  
or as the case  
may be

hereinafter called the Corporation, was duly incorporated under  
the laws of for the purpose of transacting  
insurance, (aa)

**And Whereas** the Corporation is desirous of becoming registered  
in the Province of Ontario pursuant to a statute of that Province  
known as *The Insurance Corporations Act, 1892*, which statute  
(including any Act or Acts hereafter passed by the said Province  
in amendment thereof) is hereinafter called the Act.

**And Whereas** the Corporation is desirous, in compliance with  
the said Act, of making such appointment as is hereinafter  
contained,

(b) Name in  
full.

**Now these Presents witness** that the Corporation doth hereby  
appoint (b) of the (c)\*

(c) City,  
Town, etc.,

of

in the County of

in the Province

(d) Occupa-  
tion.

of Ontario (d)

being an agent § of

(e) See  
*supra*.

the Corporation resident at (e)

aforesaid, the attorney of the Corporation in the name and on  
behalf of the Corporation to receive service of process ¶ in all  
actions and proceedings against the Corporation in the Province

\* This power of Attorney is to be executed in triplicate.

§ Section 14 (1).

¶ Section 14 (2).



of Ontario for any liabilities incurred by the Corporation therein, and also to receive from the Registry Officer all notices which the law requires to be given, or which it is thought advisable to give, and the Corporation hereby expressly declares that the chief agency of the Corporation within the said Province is at the (e)

of

(e) City,  
Town, etc.

in the County of

in the said Province,

and the Corporation further expressly declares that service of process for or in respect of such liabilities as aforesaid and receipt of such notices as aforesaid at such Office or Chief Agency, or service personally on, or receipt by such Attorney at the said (f)

(f) Place  
where the  
Chief  
Agency in  
Ontario is  
established

shall be legal and binding on the Corporation to all intents and purposes whatsoever.

*In Witness Whereof* the (g) \*

of the Corporation have subscribed these

(g) The  
President  
or Presid-  
ing officer  
and Secre-  
tary.

presents in triplicate, and affixed the Seal of the Corporation at

the (h)

of

(h) City,  
Town, etc.  
(i) State,  
etc.

in the (i)

this

day of

A.D. 189

IN PRESENCE OF

{ ..... (j) ..... }  
{ ..... (j) ..... }  
(j) Designation of office

### AFFIDAVIT.

VERIFYING THE OFFICIAL POSITIONS OF THE SIGNATORIES TO THE  
FOREGOING POWER OF ATTORNEY. §

(j)

I, (k)

of

in the (l)

of

in the (m)

To Wit:

, (n)

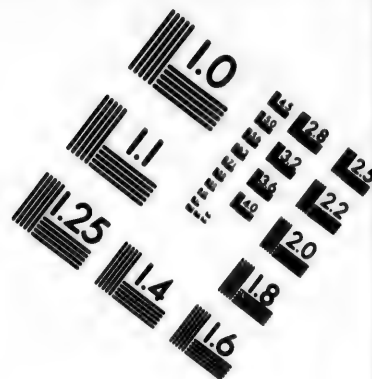
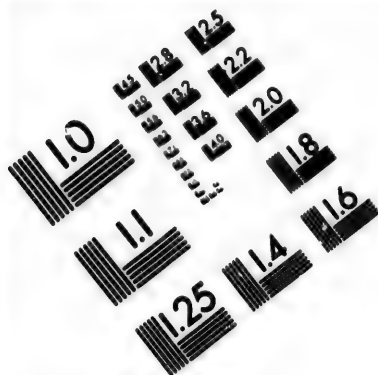
(j) State,  
or as the  
case may be.  
(k) Name in  
full.  
(l) City,  
Town, etc.  
(m) State,  
or as the  
case may be.  
(n) Occu-  
pation.

Section 2 (21).

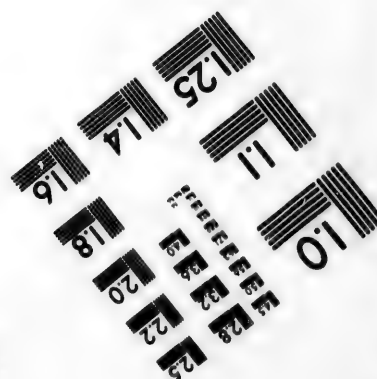
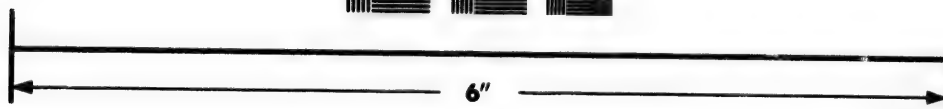
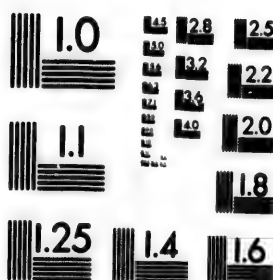
\* Section 14 (1).

§ Section 14 (1).





# IMAGE EVALUATION TEST TARGET (MT-3)



Photographic  
Sciences  
Corporation

23 WEST MAIN STREET  
WEBSTER, N.Y. 14580  
(716) 872-4503



## MAKE OATH AND SAY:

1. That I have a personal knowledge of the facts hereinafter set forth.

(o) Name in full.

2. That (o)

is the (p)

(p) President or Presiding Officer giving his official designation.

of the (q)

3. That (r)

, is the (s)  
of the said Corporation.

(q) Name of corporation applying for registry.

4. That the said (t)

are by law and by virtue of

(r) Name in full.

the respective offices now legally held by them entitled and empowered to execute the foregoing Power of Attorney, in the name and on behalf of the said Corporation

(s) Secretary or Secretarial officer, giving his official designation.

SWORN before me at

in the of

and of

this day of

1892.

(t) Names of persons set out in (2) and (3).

SEAL.

a Notary Public.

(u) State, or as the case may be.

(v) Name in full.

(w) City, Town, etc.

(x) Occupation.

(y) President or Presiding Officer, giving his official designation.

(z) Secretary or Secretarial officer, giving his official designation.

(a) Name of corporation.

(b) Signatories to the Power of Attorney.

## AFFIDAVIT OF EXECUTION.\*

To Wit: I, (v)  
of (w) in the  
(x) and of

## MAKE OATH AND SAY:

1. That I was personally present and did see the within written Power of Attorney duly signed, sealed and delivered by the (y)

and by

the (z)

of the (a)

2. That the said Power of Attorney was executed at

3. That I know the said (b)

and (b)

\* Section 14 (1).

BIBLIOTHEQUE DE DROIT

LAURENCE

4. That I am a subscribing witness to the said Power of Attorney.

Sworn before me at

in the

of this

day of

A.D. 189 .

SEAL.

a Notary Public.

FORM NO. 4.

TREASURY RECEIPT FOR CERTIFICATE FEE.

[ORIGINAL FOR INSURANCE CORPORATION.]

Insurance Corporations Act, 1892.

RECEIPT FOR CERTIFICATE FEE.

No.....

\$.....

Treasury Department, Ontario,

Toronto,.....189

Received from.....

.....Dollars,

being Fee for Registry as an Insurance Corporation.

Assistant Treasurer.

[DUPLICATE ORIGINAL TO BE DEPOSITED WITH REGISTRY OFFICER.]

RECEIPT FOR CERTIFICATE FEE.

No.....

\$.....

Treasury Department, Ontario,

Toronto,.....189

Received from.....

.....Dollars,

being Fee for Registry as an Insurance Corporation.

Assistant Treasurer.

FORM NO. 5.

CERTIFICATE OF REGISTRY AS INSURANCE  
COMPANY.

DEPARTMENT OF INSURANCE, ONTARIO.



CERTIFICATE OF REGISTRY

— AS —

No..... INSURANCE COMPANY.

*Whereas, by the Application of the.....*

*made pursuant to The Insurance Corporations Act, 1892, it has been made to appear to the undersigned, the Inspector of Insurance for the Province of Ontario, that the said Applicant is entitled to registry as an Insurance Company.*

*Now, therefore, this is to Certify that the said Company is accordingly registered for the transaction of.....*

*.....*  
*in the Province of Ontario, for the term beginning on the .....day of.....189 , and ending on the .....day of.....189 , subject to the provisions of the aforesaid Act.*

SEAL.

No.....

*Entered on the Insurance License Register, Folio.....*

*.....Entry Clerk.*

The above certificate follows the terms of Section 21.

FORM NO. 6.

TREASURY RECEIPT PRELIMINARY TO REGISTRY  
AS PROVINCIAL LICENSEE.

[ORIGINAL.]

## Ontario Insurance Act.

No. ....

S. ....

Treasury Department, Ontario,

Toronto, ..... 189..

Received from .....  
the sum of ..... Dollars, now due and  
payable by virtue of the Ontario Insurance Act.

.....  
Assistant Treasurer.

[DUPLICATE-ORIGINAL.]

## Ontario Insurance Act.

No. ....

S. ....

Treasury Department, Ontario,

Toronto, ..... 189..

Received from .....  
the sum of ..... Dollars, now due and  
payable by virtue of the Ontario Insurance Act.

.....  
Assistant Treasurer.

SEAL.

Clerk.



## Insurance Corporations Act.

FORM NO. 7.

Seal of  
Registry  
Officer.

PROVINCIAL LICENSE TO INSURANCE COMPANIES  
INDORSED AS REQUIRED BY INSURANCE  
CORPORATIONS ACT, [S. 5 (1)].

PROVINCE OF ONTARIO.

No.....N. S.



No.....N. S.

Insurance License,

18 -18 .

DEPOSIT made with the Government of Ontario.....

DOLLARS.

THIS IS TO CERTIFY, that, pursuant to The Ontario  
Insurance Act.....the

IS HEREBY LICENSED to carry on in the Province of Ontario  
the business of.....

for and during the term beginning on the.....  
day of.....A.D. 189..., and ending  
on the.....day of.....  
A.D. 189...

DATED at the City of Toronto, this.....  
day of.....A.D.....

[Signature

of

Provincial

Secretary.]

Seal of  
Prov.  
Secrty

Inspector of Insurance for the Province of Ontario.

The endorsement on the Insurance License is by virtue of Section  
5 (1).

Registered pursuant to The Insurance Corporations Act, 1892, on the { Signature of  
Insurance License Registrar as No .....Folio.....Registry Officer. }

BIBLIOTHEQUE DE DROIT

C

## FORM NO. 8.

ANNUAL DOCUMENT OF AUTHORITY ISSUED TO  
DOMINION LICENSEES AFTER FIRST LICENSE.[See *Supra*, *Ins. Corp. Act*, s. 19 (1).]

NO. [969.]

UNDER THE INSURANCE ACTS OF 1875 AND 1877.

OTTAWA, March 31st, 18 [92.]

The License No. [104] issued to [The Lloyd's Plate Glass Insurance Co. of New York] for the transaction of [Plate Glass] Insurance business in the Dominion of Canada, is hereby renewed till the thirty-first of March, 18 [98.]

Signature: [W. FITZGERALD,]

[Assistant Deputy] Minister of Finance.

Registered: [A. BLACKADAR,

for] Superintendent of Insurance.

## FORM NO. 9.

APPLICATION FOR REGISTRY AS A FRIENDLY  
SOCIETY.

MEMORANDA; Prefixed by the Department of Insurance to the application of a Friendly Society for Registry.—(1) In the case of Friendly Societies transacting insurance in the Province of Ontario on or before the 30th June, 1892, and applying for Registry under the *INSURANCE CORPORATIONS ACT, 1892*, Applications are required to be made and completed on or before the said day, by means of the following printed form, which is to be accurately filled in and sworn to by the proper officer of the Society, and is to have

Seal of  
Prov.  
Secrty

the required exhibits annexed thereto, after being properly marked by the Notary or Commissioner before whom the affidavit is taken.

- (2) Application or Registration Fees are not receivable at the Insurance Department, but are to be paid to the Treasury Department. Letters transmitting such fees should be addressed to the Assistant Provincial Treasurer, Parliament Buildings, Toronto, and the remittance should be made by Post Office order, bank draft, or accepted cheque, payable to the order of the Provincial Treasurer of Ontario. The Provincial Treasury will issue a receipt in duplicate; the duplicate is to be annexed as an Exhibit to the Application for Registry.
- (3) The following Application is to be made in duplicate, and the Duplicate original should be marked "Duplicate." ]

### PROVINCE OF ONTARIO.

### Application for Registry as a Friendly Society.

*Made to the Registrar of Friendly Societies for Ontario.*

PURSCA 40

### THE INSURANCE CORPORATIONS ACT, 1892.

Name of  
Applicant  
Society.

*By this Application* (a) made in duplicate this.....  
day of.....A.D.....the.....

hereinafter called the Society hereby applies for admission to registry under the provisions of the *Insurance Corporations Act, 1892*, hereinafter called the Act.

How incor-  
porated, or  
(if within  
Section 10  
(1) of Act)  
how regis-  
tered.

2. The Society was lawfully.....  
on the.....day of.....  
18.....and the documents evidencing the same are filed or  
deposited in the.....  
at.....of which the documents enumerated  
in the Schedule to this paragraph and annexed to this Applica-  
tion as Exhibits numbered.....to.....  
are hereby declared to be true copies.

(a) Section 12 (1).

## SCHEDULE OF DOCUMENTS (INCORPORATION, ETC.)

EXHIBIT No.	TITLE OR DESCRIPTION OF INSTRUMENT.	DATE OF INSTRUMENT.	REMARKS.	Schedule of Documents

8. The said [incorporation or registration, as the case may be] ..... was [effected, or validated, or aided, as the case may be] ..... by or under the following special or private Acts, and public general Statutes respectively :

By or under what enactments said incorporation (or registration) effected.

LEGISLATURE.	YEAR AND CHAP- TER.	TITLE OF ENACTMENT.	WHETHER SPECIAL ACT OR PUBLIC GENERAL ACT.	WHETHER STILL IN FORCE.	EXHIBIT No.

Of the enactments in this paragraph mentioned, (not being expired or repealed, nor being enactments of the Province of Ontario, nor of the Dominion of Canada, nor public general Statutes of the United Kingdom) the annexed Exhibits, numbered.....to.....are hereby declared to be true copies.

4. The Legislative enactments by which the powers, duties, rights and obligations of the Society are now declared, defined, limited, or governed, are the following :—

Enactments by which the powers etc., of the Society are now governed.

LEGISLA- TURE.	YEAR AND CHAPTER	TITLE OF ENACTMENT.	WHETHER SPE- CIAL ACT OR PUB- LIC GENERAL ACT.	WHETHER STILL IN FORCE.	EXHIBIT No.

Of the enactments in this paragraph mentioned, (not being enactments already specified in paragraph 8, nor enactments of the Province of Ontario, nor of the Dominion of Canada, nor public general Statutes of the United Kingdom) the annexed Exhibits, numbered.....to.....are hereby declared to be true copies.

Original  
corporate  
or collect-  
ive name.

5. The original corporate or collective name of the Society or of the Provincial division of the Society now applying for registry was.....

When  
original  
name  
unaltered.

6. [If name has been altered, expunge this paragraph and fill up paragraph 7.] The said original corporate or collective name of the Society has remained unaltered to the date of this Application.

When  
original  
name alter-  
ed.

7. [If name has not been altered, expunge this paragraph.] The original corporate or collective name of the Society was successively altered as follows:

DATE OF ALTERATION.	NEW NAME.	AUTHORITY FOR CHANGE OF NAME.

8. The present full corporate or collective name of the <sup>Present</sup> Society is..... <sup>name of</sup> Society.

9. The Society hereby applies to be registered upon the <sup>Registry</sup> Friendly Society Register under the following name:—(b)..... <sup>name.</sup>

10. The Head Office (c) of the Society is at..... <sup>Head Office</sup> in the.....of.....and the Society <sup>of Society.</sup> can at the said Head Office lawfully sue and be sued in the name of [*here insert the proper corporate name for the purposes of action; or if the Society cannot sue and be sued under a corporate name, then insert the designation or designations of the officers or persons by or against whom action can lawfully be brought*] .....

11. [*If the Head Office is elsewhere than in the Province of Ontario, fill in the particulars required by this and the next paragraph.*] The Chief Agency of the Society in the Province of Ontario is at.....in the..... of.....and the name and address of the Chief Agent (d) for Ontario are as follows:—

Name.....

Address .....

12. [*See last paragraph.*] The Attorney in Ontario duly <sup>Power of</sup> empowered by the Society to receive process and accept notice <sup>Attorney.</sup> in its behalf as required by the Act is:—

Name.....

Address.....

(b) No Corporation shall be registered under a name identical with that under which any other existing Corporation is registered, or so nearly resembling such name as to be likely, in the opinion of the Registry Officer, to deceive the members or the public as to its identity, section 23.

(c) 'Head Office' means the place where the chief executive officers of the Corporation transact its business, section 2 (20).

(d) Chief Agency means the principal office or place of business in Ontario of an extra provincial corporation, section 2 (21).

And the Power of Attorney (e) duly executed by the Society in this behalf is hereto annexed as Exhibit No.....; a duplicate also of the said Power of Attorney has been duly filed in the office of the Clerk of the Process at Osgoode Hall, in the City of Toronto.

Financial  
statement.

18. The Financial Statement (f) annexed hereto as Exhibit No....., sworn to by the Presiding Officer and the Secretary of the Society, is a full, true and complete shewing of the Insurance Fund of the Society (as defined by section 2 (18) of the Act), as the said Fund stood on the..... day of.....18.....

The following is the form of affidavit required by paragraph 18. The affidavit is to have annexed to it the Financial Statement, the latter having been properly marked and authenticated by the signature of the Commissioner before whom the affidavit is taken. The Financial Statement and affidavit then constitute together the exhibit necessary for purposes of paragraph 18.

#### FORM OF AFFIDAVIT REQUIRED BY PARAGRAPH 18.

PROVINCE OF ONTARIO (1)

(1) Or as the  
case may  
be.

COUNTY OF (1)

(2) Name of  
applicant  
body.

IN THE MATTER OF the Application for Registry under *The Insurance Corporations Act, 1892*, made by the (2) bearing date the day of 189 .

WE, of the County of duly appointed to and now holding the office of President (1) in the aforesaid Association, and duly appointed to and holding the office of Secretary (1) in the said Association, severally make oath and say, and each for himself says, that we are the above described officers of the said Association, and that we have each of us individually the means of verifying the correctness of the statement hereto annexed and marked "A," and that the said statement is a full, true and complete showing of the Insurance Fund of the (2)

[\* When the Head Office of the Society is elsewhere than in Ontario, add these words in writing:—"and a duplicate of the said Financial Statement has been duly filed in the office of the Clerk of the Process at Osgoode Hall, in the City of Toronto."]

(e) Section 14 (1); for form of power of attorney see *supra*.

(f) This Financial Statement must show the Society to be solvent, section 13; solvency in the case of a Friendly Society means that the Society has either no present liabilities, or has immediately realizable assets adequate to discharge its present actual liabilities, section 2 (16).

as defined by sub-section 18 of section 2 of *The Insurance Corporations Act, 1892*, as the said Fund stood on the

day of 189 .

Sworn before me at the

of in the

of this

day of A.D. 189 .

14. The last audit of the Insurance books, funds and vouchers Audit. of the Society was completed on the.....day of .....18.....and the names and addresses of the auditors are as follows :

NAMES OF AUDITORS.	ADDRESSES.

15. The Society is hereby declared to be solvent within the meaning of the Act, that is to say [add the Society has no present liabilities apart from actuarial liabilities; or, as the case may be, the Society has present liabilities amounting in all to \$....., but has immediately realizable assets adequate to discharge said liabilities] (g).....  
The Society is solvent.

16. The general Insurance Funds (h) of the Society are in the possession or control of the following executive officers who were elected by..... [State how elected whether by the members in general meeting or otherwise] and the said  
General Insurance Funds, in whose possession or control.

(g) Section 2 (16).

(h) Insurance Funds include all moneys, securities for money and assets appropriated by the Constitution of the Society to the payment of insurance liabilities, or appropriated for the management of the insurance branch of the Society, or otherwise legally available for insurance liabilities.



executive officers hold office under the constitution, by-laws or rules of the Society for the following terms respectively :—(i)

DESIGNATION OF OFFICE.	NAME OF OFFICER	POST OFFICE ADDRESS.	TENURE OF OFFICE.	REFERENCES TO CONSTITUTION, BY-LAWS AND RULES.

Reserve Funds, in whose possession or control

17. The Society has in Ontario [a or no, as the case may be] ..... Reserve Fund (j) of.....to secure holders of insurance contracts [Where the Society has a Reserve Fund add : The said Reserve Fund is invested (k) or deposited as follows] :—.....

MORTGAGES ON REALTY, being within section 29 of the Act.	BONDS OR DEBENTURES, being within section 29 of the Act.	SECURITIES OTHER THAN FOREGOING.	DEPOSITED IN CHARTERED BANK.	DEPOSITED WITH AUTHORIZED BUILDING SOCIETY OR LOAN COMPANY.	TOTAL.
\$ c.	\$ c.	\$ c.	\$ c.	\$ c.	\$ c.

The said Reserve Fund is in the possession or control of the following officers :—

DESIGNATION OF OFFICE.	NAME OF OFFICER	POST OFFICE ADDRESS.	TENURE OF OFFICE.	REFERENCES TO CONSTITUTION, BY-LAWS OR RULES.

(i) The persons insured in or by the Society must have effective control, either directly or through representatives elected for a term not exceeding three years, over the insurance funds of the Society section 8 (2).

(j) See section 17 (3).

(k) For permissible investments, see section 29 (2).

Kind of insurance undertaken by Society.

MAXIMUM AMOUNT OF  
BENEFIT OR INSURANCE

19. The documents enumerated in the schedule to this paragraph, and annexed to this application as Exhibits numbered respectively from.....to.....comprise all Forms of Application and of Contract, and all instruments pertaining to applications or contracts (*n*) now used by the Society or by any of its branches, lodges, or divisions in Ontario, for purposes of insurance :—

SCHEDULE OF FORMS USED BY THE SOCIETY FOR  
APPLICATIONS, CONTRACTS, ETC.

EXHIBIT NO.	TITLE OR DESCRIPTION OF DOCUMENT.	REMARKS.

(1) For the insurance that may be undertaken by a Friendly Society within the Act, see section 4 (2) C.

(m) See section 33 (1).

Society in  
actual and  
active  
operation  
on 10th  
March, 1890

20. The Society was, on the tenth day of March, 1890, an insurance corporation within the meaning of section 2 (18), of the Act, and was on that day in actual and active operation in Ontario as a lawful society, and as an insurance corporation, and had on that day a subsisting and *bona fide* membership of at least.....persons, residing in Ontario entitled to benefits or holding insurance certificates under the Constitution, By-laws and Rules of this society or of its branches, lodges or divisions in Ontario. (n) In proof of the facts in this paragraph stated, the society tenders the following evidence: [*Here state the nature of the evidence.*]

Society in  
continuous  
operation  
since 10th  
March,  
1890.

21. The Society has since the 10th March, 1890, and up to the date of this Application, continued in actual and active operation in Ontario as a lawful society, and as an insurance corporation, and has, at the date of this Application, in good standing upon the books of the Society not less than.....  
.....(o) members, nor more than.....  
members, all residents of Ontario and holding insurance certificates or entitled to insurance benefits under the Constitution, By-laws and Rules of this Society, or of its branches, lodges or divisions in Ontario. In proof of the facts in this paragraph stated the society tenders the following evidence: [*Here state the nature of the evidence.*]

Constitu-  
tion, By-  
laws and  
Rules of the  
Society.

22. The documents enumerated in the Schedule to this paragraph and annexed to this Application as Exhibits, numbered respectively from.....to.....are hereby declared to be true copies of the Constitution, By-laws and Rules of the Society (including all branches, lodges or divisions of the Society) so far as relate to the insurance funds or to the insurance benefits or contracts of the Society in Ontario; (p)

(n) As to society incorporated under *Benevolent Societies' Act*, see section 8; as to foreign society, see section 10.

(o) A corporation which has less than fifty members in good standing on its books, is ineligible for registry as a Friendly Society: section 4 (2) D; if the applicant be a foreign society, it must have at the date of application a subsisting membership of at least five hundred persons, such persons being *bona fide* residents of Ontario: section 10 (1).

(p) The material required of a Friendly Society includes duplicate certified copies of the constitution, laws, rules and regulations of the society, and also of Ontario branches thereof: section 12 (1).

and the documents enumerated in paragraph 19 and in this paragraph, taken together, exhibit all rules, regulations, provisions, terms or conditions now in force, declaring, defining or limiting the insurance or insurance benefits undertaken by the Society or any sub-division thereof in Ontario:

SCHEDULE OF DOCUMENTS (CONSTITUTION,  
BY-LAWS, ETC.)

EXHIBIT No.	TITLE OR DESCRIPTION OF DOCUMENT.	DATE OF DOCUMENT.	REMARKS.

23. The Society hereby applies to be registered for the insurance transaction of the following insurance: *[Here set out specifically the kind or kinds of insurance, being a kind or kinds within the powers of the Society and the provisions of the Act.]* Insurance to be transacted.

24. In respect of this Application the application fee of \$..... has been duly paid to the Provincial Treasury, (g) The Application Fee has been paid. and the [duplicate-original, or copy as the case may be] ..... of the Treasury Receipt therefor, numbered.....and dated 189 , is hereto annexed as Exhibit No.....

PROVINCE OF ONTARIO, }  
County of .....

I,.....of.....  
duly appointed to and now holding the office of.....  
in the aforesaid Society, make oath and say, that the present

(g) The application fee must be paid before the application is considered; for tariff of fees, see section 62.

Application is made by me *bona fide* in behalf and by authority of the said Society; also that I have the means of verifying the correctness of this present application; and that the facts and documents by the form of Application required to be stated and exhibited are herein truly and fully stated and exhibited; also that no fact nor document material to be disclosed has been concealed or withheld.

Sworn before me (r) at.....  
 in the County of.....  
 this.....day of.....  
 A.D. 189 .  
 .....

(r) Affidavit may be sworn to before a Justice of the Peace, Notary Public, or Commissioner of the High Court for taking affidavits: section 47 (2).

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### RECEIPT FOR APPLICATION FEE.

See *supra* p. 397.

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### POWER OF ATTORNEY.

(WHERE HEAD OFFICE OF CORPORATION IS ELSE-  
 WHERE THAN IN ONTARIO.)

See *supra* p. 398.

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### RECEIPT FOR CERTIFICATE FEE.

See *supra* p. 401.

## FORM NO. 11.

## CHANGE OF CORPORATE NAME.

FORM OF DIRECTION MADE BY REGISTRY OFFICER AS TO NOTICE OF APPLICATION FOR CHANGE OF NAME, (SEE SECTION 24, *supra*.)

Pursuant to *The Insurance Corporations Act, 1892*, you are hereby directed to give notice in successive issues of the *Ontario Gazette*, and also in successive issues, (or as the case may be) of the newspaper published at \_\_\_\_\_, the said notice, to state that after the publication of, or within four weeks (or as the case may be) after the publication of the said notice, the [naming the corporation by its present name] will apply to the Lieutenant-Governor of Ontario in Council to have its corporate name changed to [new name applied for].

FEE.

## FORM NO. 12.

FORM OF NOTICE IN *Ontario Gazette* OR PUBLIC NEWSPAPER, (SEE *Insurance Corporations Act*, SECTION 24, *supra*.)

## NOTICE.

[Present name. of corporation].

## APPLICATION FOR CHANGE OF NAME.

Pursuant to a direction of the Registry Officer bearing date the \_\_\_\_\_ day of \_\_\_\_\_ 1892, made under *The Insurance Corporations Act, 1892*, the [present corporate name of Applicant]

gives notice that after the publication hereof in the *Ontario Gazette* (or as the case may be), the said corporation will apply to

H.I.C.A.—27

IS ELSE-

FEE.

the Lieutenant-Governor of Ontario in Council to have its corporate name changed to  
[*new name applied for*].

**1892.**

FORM NO. 18.

DEPARTMENT OF INSURANCE, ONTARIO.

No.....

— AS —

FRIENDLY SOCIETY.

**Whereas, by the Application of the**.....

*made pursuant to The Insurance Corporations Act, 1892, it has been made to appear to the undersigned, the Registrar of Friendly Societies for the Province of Ontario, that the said Applicant is entitled to registry as a FRIENDLY SOCIETY, now, therefore,*

***This is to Certify, that the said Friendly Society is accordingly registered for (a).....***

*in the Province of Ontario, for the term beginning on the..... day of.....189...and ending on the.....day of.....189..., (b) subject to the provisions of the aforesaid Act.*

No.....

*Entered on Friendly Society Register, Folio.....*

**.Entry Clerk.**

(a) The insurance that may be undertaken by the Society is set out in the Certificate of Registry, section 18 (2).

(b) The Corporation is deemed to be registered from the commencement of the first day to the end of the last day specified, section 26 (6).

## FORM NO. 14.

[ORIGINAL—TO BE RETAINED BY APPLICANT FOR LICENSE.]

## INSURANCE CORPORATIONS ACT, 1892.

## RECEIPT FOR AGENT'S LICENSE FEE.

No..... *Treasury Department, Ontario,*  
 \$..... *Toronto.....189*  
*RECEIVED from.....Two Dollars,*  
*in full of Agent's License Fee for term ending 30th June, 189 .*  
 .....  
*Assistant Treasurer.*

[DUPLICATE ORIGINAL—TO BE PRESENTED AT INSURANCE DEPARTMENT.]

## INSURANCE CORPORATIONS ACT, 1892.

## RECEIPT FOR AGENT'S LICENSE FEE.

No..... *Treasury Department, Ontario,*  
 \$..... *Toronto.....189*  
*RECEIVED from.....Two Dollars,*  
*in full of Agent's License Fee for term ending 30th June, 189 .*  
 .....  
*Assistant Treasurer.*



FORM NO. 15.

PROVINCE OF ONTARIO.

## Insurance Corporations Act, 1892.

No. ....

## APPLICATION

FOR REGISTRY AS INSURANCE AGENT. (a)

.....189

TO THE INSPECTOR OF INSURANCE FOR ONTARIO,

Department of Insurance,

TORONTO, ONTARIO.

The undersigned Applicant, [*full name of applicant*]  
 now residing at in the of  
 [*present occupation or employment*]

HEREBY MAKES APPLICATION pursuant to *The Insurance Corporations Act, 1892*, to be registered as Insurance Agent for the term ending the 30th June, 189 ; and the Applicant annexes hereto the following documents:—

(1) Receipt of Provincial Treasurer, (b) No. , dated 189 for the sum of Two Dollars, being the fee payable under the said Act in respect of the Registry hereby applied for.

(2) (c)

(3)

The post-office address of the applicant is

(Signature of Applicant).....

(a) Section 38 (4).

(b) Section 62; see also section 2 (22).

(c) The application must be accompanied by a recommendation from the manager of a Canadian or from the chief agent of a foreign insurance corporation legally authorized to transact business in Ontario: section 38 (6).

## FORM NO. 16.

## RECOMMENDATION FOR REGISTRY.

*Pursuant to Insurance Corporations Act, 1892, Sec. 38, (6).*

The undersigned, the (a)  
of the (b)

having a (c)  
acquaintance with the within mentioned (d)

hereby recommends the said Applicant as a person suitable to  
be registered as an Insurance Agent under the provisions of  
*The Insurance Corporations Act, 1892.*

Dated at

189

(a) "Man-  
ager" or  
"Chief  
Agent for  
Ontario."  
as the case  
may be.

(b) Corpor-  
ate name of  
Insurance  
Company.

(c) "Person-  
al" or  
"business"  
or as the  
case may  
be.

(d) Name of  
Applicant  
for registry

## FORM NO. 17.

## DEPARTMENT OF INSURANCE, ONTARIO.

No.....



## INSURANCE AGENT'S

## CERTIFICATE OF REGISTRY.\*

*For the term beginning.....189..and ending.....189 §*

**Whereas**, pursuant to *The Insurance Corporations Act, 1892*,  
*it has been made to appear to the undersigned, the Insurance*

\* Section 38 (7).

§ Section 26 (6).

*Insurance Corporations Act.*

*Registry Officer under the said Act for the Province of Ontario,  
that.....of.....is entitled to  
registry as Insurance Agent under the provisions of the said  
Act.*

*Now, therefore, this is to Certify that the aforesaid.....  
.....is accordingly registered as an Insurance Agent  
for and during the term beginning on the.....day of  
.....189... and ending on the.....day of.....  
189...*

.....  
*Entered on the Insurance Agents' Register as No.....*

.....*Entry Clerk.*

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FORM 18.

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Where the Registry Officer has received intimation of intention to contest the registry of any applicant, the following notice requiring statement of objections has been employed by the Department :—

NOTICE TO STATE OBJECTIONS.

DEPARTMENT OF INSURANCE, ONTARIO,

*Parliament Buildings, Toronto, 189 .*

SIR,—In the matter of the Application of  
for Registry A., you are hereby notified that  
the above has filed in this Department  
an Application for Registry with exhibits.

If you desire to take objections to the granting of the re-  
gistry thus applied for, a statement setting out particularly the  
objections intended to be raised, and the grounds of such objec-  
tions, must be filed with the undersigned on or before

If before the filing of objections it is desired to inspect the  
Applicant's application and exhibits, permission to inspect may,  
on request in writing, be granted to your Solicitor or other duly  
accredited agent.

.....  
*Registry Officer.*

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## APPENDIX C.

# POLICIES AND FORMS OF CONTRACTS

ILLUSTRATIVE OF THE PROVISIONS OF

THE INSURANCE CORPORATIONS ACT.

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# APPENDIX C.

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## POLICIES AND FORMS OF CONTRACTS.

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### REDUCIBLE TERM ENDOWMENT POLICY.

(SEE PAGE 46, *supra*.)

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Number.....  
Amount.....

Age.....  
Premium \$.....

### THE PEOPLES LIFE INSURANCE COMPANY.

HEAD OFFICE,  
TORONTO, CANADA.

Incorporated by Special Act of the  
Legislature of Ontario.

*The Peoples Life Insurance Company*, (hereinafter called the Company), in consideration of the application for an insurance upon h..... life by.....(hereinafter called the Assured) of.....in the County of.....and of the agreements and statements contained in such application which are hereby made part of this contract and of the.....premium of.....Dollars to be paid in advance to the Company at its Head Office in the City of Toronto, on or before the delivery of this Policy, and thereafter on the .....day of.....in every year during the term of.....years ensuing the date hereof, agree to pay to the assured the sum of.....Thousand Dollars on the.....day of.....one

thousand eight hundred and ..... or in case of the death of the assured before the said date to pay to..... the sum of..... **Thousand Dollars**, (first deducting therefrom the balance of the current year's Premium, if any, and all loans on account of this Policy), upon satisfactory proof at its Head Office of the death of the assured during the continuance of this Policy under the following conditions:

1. This policy shall be credited, during the continuance of the same, with its allotted share of the profits of the Company ascertained and declared by the Directors of the Company at each quinquennial period after the date hereof, the amount of such profits to be applied in reduction or extinction of Premiums payable for the latest year or years (as the case may be), of the endowment period, so that the termination of the endowment period shall be thereby accelerated and the said insurance money payable at an earlier date than that herein fixed.

2. Thirty days' grace will be allowed for payment of premiums; after the expiration of thirty days from the time any premium is payable, if the same be unpaid, this policy shall be void, except as provided in the following clause hereof.

3. After three full annual premiums have been paid upon this Policy, the Company will, upon the legal surrender thereof before default in payment of any premium, or within four months thereafter, issue a non-participating policy for the full proportion of the amount of this Policy which the number of full years' premiums paid bears to the total number required by the term for which this Policy is issued or for the assured's expectation of life.

4. If the assured shall die by his own hand, or by the hand of Justice, or in the Military or Naval service of any foreign power, or if there be any untrue statement material to this contract in the application for this insurance, or in the answers to the Medical Examination relating thereto, this Policy shall be void, and all payments made thereon forfeited to the Company, and the Company shall pay to the assured or the beneficiary named in this Policy the surrender value hereof only. But after two years this condition shall be void, and provided the age of the assured has been admitted by the Company and the assured be not in arrear of any premium thereon, the liability of the Company under this Policy shall be unconditional.

5. No payment of premium shall be effectual or binding upon the Company (notwithstanding that the usual receipt may have been given therefor), if the same be made by cheque or note and such cheque or note be not paid according to the exigency thereof.

6. No condition of this contract can be changed, waived or altered except in writing, signed by the President or Manager of the Company.



*In Witness Whereof*, the said Company has hereunto affixed its Corporate Seal, and by its..... President and Manager signed and delivered this contract at the City of Toronto, this ..... day of ..... 189..

.....  
Manager.

.....  
President.

No..... Life, Special Reduced System  
Sum Assured \$..... with.....Profits.....

ESTABLISHED IN 1847.

## THE CANADA LIFE ASSURANCE COMPANY.

Incorporated by Act of Parliament.

SUBSCRIBED CAPITAL ONE MILLION DOLLARS.

Chief Office—HAMILTON, ONT. Dated.....

Annual Premium for first five years \$.....

" " thereafter - - - .....

Payable - - - - - .....

Issued in terms of "An Act to secure to Wives and Children the benefit of Life Insurance."—47 & 48 Vic. Cap. 20 and 28, and amendments.

1. WHEREAS,.....the person assured by this Policy, hath proposed to effect an assurance with THE CANADA LIFE ASSURANCE COMPANY, in the sum of.....Dollars, on the life of himself for the benefit of his.....for the remainder thereof, and has caused to be delivered into the Office of the said Company a declaration signed by the said Assured bearing date the .....day of.....in the year of our Lord one thousand eight hundred and.....containing with the relative papers the several particulars requisite for such assurance, which declaration and relative papers the said assured hath agreed, shall be the basis of the contract between him and the said Company.

2. AND WHEREAS, the said assured hath paid the sum of.....Dollars as a premium for said assurance for twelve calendar months from the.....day of.....one thousand eight hundred and.....

3. NOW THIS POLICY WITNESSETH, That if the assured shall die before the expiration of twelve calendar months from the said last mentioned date, or in the event of his living beyond the said term, if the said assured or his assigns shall pay to the said Company the like premium on or before the expiration of the said term of twelve calendar months from said date, and on or before the expiration of every subsequent twelve calendar months during the life of the said assured, the sum of .....Dollars; then, upon proof of death of the assured to the satisfaction of the Directors, and of the time and manner of its occurrence, together with such other information pertaining to the cause of death and circumstances connected therewith as may be required by the Directors, and upon proof of the age of the assured, (if that shall not have already been supplied, and age been admitted by the Company),



and upon the title of the parties claiming the money being shown and established, and upon the execution and delivery of a discharge to the Company by all necessary parties, the Company will pay to the party for whose benefit this assurance is effected, according to the terms of this Policy and the acts in that behalf, or other the person or persons whose title thereto has been so established, at the Head Office of the Company, in Hamilton, on demand, the sum of.....Dollars, together with such further sum or sums, if any, as shall have been assigned to or in respect of this Policy, pursuant to the Rules and Regulations for the time being of the said Company, as or by way of bonus or addition to the sum hereby assured, but subject to addition or diminution, as the case may be, in accordance with the practice of the Company, in case it shall appear that the age of the assured has been incorrectly stated.

4. PROVIDED ALWAYS, That in the event of this Policy becoming a claim during the currency of any year from the anniversary date written in section two hereof, and while the Premiums under this Policy may be payable by semi-annual or quarterly instalments, the Company shall be entitled to deduct any unpaid semi-annual or quarterly instalments, applicable to that year, from the sum payable under the Policy at settlement.

5. PROVIDED ALSO, That this Policy, and the Assurance hereby effected are and shall be subject to the conditions and regulations hereupon endorsed, so far as the same are and shall be applicable, in the same manner as if the same respectively were here repeated and incorporated in this Policy.

6. IN TESTIMONY WHEREOF, the President and Managing Director and Secretary of the said Company have hereunto set their hands, and caused the seal of the said Company to be hereunto affixed, at the City of Hamilton, this.....day of.....in the year of our Lord one thousand eight hundred and.....



.....

.....

*President and Managing Director.*

.....

*Secretary.*

Entered and countersigned:

.....

## CONDITIONS OF ASSURANCE.

1. Thirty days of grace are allowed for payments of premiums, but should the payment due upon a Policy, or any instalment thereof, remain unpaid beyond that time, it may be revived at any period within six months, upon evidence being given which shall be satisfactory to the Directors that the party or parties continue good assurable lives, and payment of the premiums in arrear, and a fine not exceeding five per cent. thereon; or at any period within twelve months, upon similar evidence, and upon the payment of the premiums in arrear, and a fine not exceeding ten per cent. thereon; or within the same periods, upon similar evidence, where a Policy has been in force for not less than two years, a Policy will be granted, representing the equitable value of premiums already paid, without liability to further ordinary premiums. Policies which have lapsed, through *unintentional* omission to pay a premium, may be renewed, in the discretion of the Directors, within thirteen months after said premium became due, on payment of all arrears, with a fine of one per cent. per month.

2. Policies which have been in existence two years shall be indisputable on any ground whatever. Policies of less than two years' standing on the lives of persons who shall die by suicide, duelling or by the hands of justice, shall be void, excepting in those cases where the Policies have been effected by one party on the life of another, or where they have been assigned to third parties for valuable consideration.

3. Policies of not less than three years' standing will be purchased at a fair valuation, according to the rules and regulations of the Company for the time being.

4. Residence is permitted within any part of the Dominion of Canada and of the United States, as far south as to include the States of Virginia, Kentucky, Missouri, Kansas, Colorado, Utah, Nevada, and California, if the person on whose life the assurance depends be not engaged in mining pursuits and also in any part of Europe. Travel only—not permanent residence—is permitted in any part of the United States between 1st November and 1st June in any year. Persons may voyage as passengers in good seaworthy vessels in time of peace, from any port within the said limits of residence, to any other port within the same, either in America or in Europe; excepting, however, voyages from ports on the Pacific coast to others on the Atlantic coast of America, or *vice versa*, and also excepting voyages from the said Pacific coast to Europe, or *vice versa*. If the person or persons assured shall reside beyond the boundaries thus described, or travel beyond the limits thus fixed, without previously obtaining permission by the Directors for the time being, this Policy shall be immediately forfeited, and all assurance thereon shall cease; excepting in cases where Policies have been effected by one party on the life of another, or where they have been assigned to third parties for valuable consideration, when forfeiture shall not take place, if satisfactory evidence be given to the Directors that the facts were communicated to the Office as soon as they were known to the parties interested, and payment be made of the extra premium required to cover any additional risk incurred.

*Insurance Corporations Act.*

This condition No. 4 shall be altogether cancelled and dispensed with after two years from the date of this Policy, provided the person whose life is assured shall not, during that time, have resided or travelled beyond the boundaries and limits specified.

.....  
*President and Managing Director.*

June, 1887.

.....  
*Secretary.*

PRINTED IN ACCORDANCE WITH THE STATUTE 52 VIC. CAP. 32, ONTARIO.

The declaration mentioned in the Policy, and contained in the application for assurance, is in this form :

I.....the above designed, do hereby declare that to the best of my knowledge and belief, I am at present in good health, not being afflicted with any disease or disorder, external or internal; and that the above statement of my age and other particulars is true. And I.....(the party in whose favor the assurance is to be granted), do hereby agree that this declaration shall be the basis of the contract between me and The Canada Life Assurance Company, that I will accept and take up the Policy hereby applied for, when issued by said Company, and that if any untrue averment has been intentionally made, or any material information has been wilfully withheld in this declaration, or in the replies to be given to the Company's medical adviser in connection herewith, all sums which shall have been paid to the said Company upon account of the assurance granted in consequence thereof, shall be forfeited, and the assurance be absolutely null and void; and further, that the continuance of the assured in the same state of health at the time of the payment of the first premium, is a condition of the assurance taking effect.

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## 20. PAYMENT LIFE—SEMI-TONTINE POLICY.

(See page 48, *Supra.*)

Sum Insured \$..... No.....  
 Annual Premium..... Age.....

## THE NORTH AMERICAN LIFE ASSURANCE COMPANY.

*Head Office, 22 to 28 King St. West, TORONTO, ONT.*

*In Consideration of the Application for this Policy* and of the statements and agreements therein contained, hereby made a part of this contract, and of the.....annual premium of..... Dollars to be paid in advance to the Company, at its Head Office, in the City of Toronto, on the delivery of this Policy, and thereafter on the .....day of.....in every year during the term of.....years insures the life of..... of.....in the County of..... and Province of.....and promises to pay to .....h.... executors, administrators or assigns, the sum of..... Dollars, first deducting therefrom the balance of the current year's premium, if any, and all loans on account of this Policy, upon satisfactory proof at its Head Office, of the death of the insured during the continuance of this Policy, under the following provisions:

1. That, if after being in force three full years, this Policy shall lapse for the non-payment of any premium, note, cheque or other obligation given on account of a premium, the Company will, upon application of the insured and the surrender of this Policy within three months after such lapse, issue at insured's then age, a non-participating paid up Policy with the same provisions as this Policy, for such sum as the legal net reserve thereon at the time of lapsing (less any indebtedness hereon) will purchase as a single premium at the Company's published rates; or if, after the payment of three or more annual premiums hereon, this Policy is surrendered while in force, the Company will pay its equitable cash value, according to the rules of the Company;

2. That the insured may, without previous notice to the Company, travel beyond the limits of ordinary hazard, in which case an extra premium shall be charged for the extra risk, equal to that usually charged in similar cases by other first-class Companies; but, if the extra premium be not paid at the time the extra risk begins, IT SHALL NOT INVALIDATE THIS POLICY, and the Company shall have a lien hereon for such extra premium;

3. That, after being in force three years, the only conditions which shall be binding upon the holder of this Policy, are that he shall make the payments hereon as herein provided, and that the provisions as to residence, travel, occupation, proofs after death, and limitation of time for action or suit, shall be observed. In all other respects, after the expiration of the said three years, the liability of the Company under this Policy shall not be disputed.

4. This Policy is issued and accepted under the Company's Semi-Tontine Dividend Plan upon the following special provisions printed and written, and also those on the back hereof, all of which are hereby incorporated herein and made part hereof:

## Insurance Corporations Act.

*Provision B.*—That the Tontine Dividend Period for this Policy shall be completed on the.....day of .....A.D. ....

*Provision C.*—That no dividend shall be allowed or paid upon this Policy unless the person whose life is hereby insured shall survive the completion of its Tontine Dividend Period as aforesaid, and unless this Policy shall then be in force.

*Provision D.*—That all surplus or profits derived from such Policies on the Semi-Tontine Investment Plan as shall not be in force at the date of the completion of their respective Tontine Dividend Periods, shall be apportioned equitably among such Policies as shall complete their Tontine Dividend Periods.

*Provision E.*—That upon the completion of the Tontine Dividend Period, as aforementioned, provided this Policy shall not have been terminated previously by surrender, lapse or death, the legal holder or holders of this Policy shall have the option upon its then surrender, either, first to withdraw in cash this Policy's entire share of the assets, that is the *accumulated reserve*, which shall be..... Dollars, and in addition thereto the surplus apportioned by this Company to this Policy; or secondly, to convert the said reserve and surplus into a paid-up Policy without profits for an equivalent amount, provided always that if the amount of said paid-up Policy shall exceed the original amount of the insurance, a certificate of good health from a medical examiner of the Company, and subject to its approval, shall be required; or thirdly, to continue the insurance for the original amount without further payment of premiums, the Policy being paid-up by its terms, and apply the entire Tontine Dividend to the purchase of an annuity, which, together with the dividends on this Policy shall be paid in cash to the legal holder or holders of this Policy; or fourthly, to withdraw in cash the share of the accumulated surplus apportioned by said Company to this Policy, which remains in force as a fully paid-up participating Policy for the sum named herein; but if no notice in writing shall be given to the Company of the way elected in which to apply the Tontine Dividend, within sixty days after the completion of the Tontine Period, then the Tontine Dividend shall be applied in the third way just mentioned.

*Provision F.*—That after the completion of its Tontine Dividend Period, while this Policy shall remain in force, it shall be entitled to all the rights and privileges of ordinary Policies of the same age and kind.

*Provision G.*—A grace of one month will be allowed in payment of Premiums on Policies in this class, at the expiration of which time if said premium remain unpaid this Policy shall thereupon become void. But a *re-instatement* will be permitted, if application therefor be made in writing to the Company at its Head Office within two months after the expiration of the month of grace, accompanied with a certificate of good health from a medical examiner of this Company, on the Company's Form No. 24, subject to its approval, provided always that whenever advantage is taken of this grace or of the privilege of re-instatement, interest shall be paid to the Company at the rate of seven per cent. per annum for the time deferred.

No provision of this contract can be changed, waived, or modified, or permit granted, except by a written agreement signed by the President, Vice-President, or the Managing Director of the Company.



IN WITNESS WHEREOF, the said Company has hereunto affixed its Corporate Seal, and by its..... President and Managing Director signed and delivered this contract at the City of Toronto, this..... day of .....A.D. 18..

.....  
Managing Director

.....  
President.

*This Policy is issued, and also accepted, by the Insured and Assured, upon the following additional Provisions and Agreements therein made a part thereof:*

I.—If any statement made in the application and therein declared to be material to the contract, be untrue; or if any premium, note, cheque, or other obligation given on account of a premium, be not paid when due; or if, without a permit, the insured engage as an occupation; (1) in blasting, mining, submarine labor, the production of any explosive material, or in any naval or military service (except in the militia or volunteer corps in defence of Canada) or (2) engage in arial or arctic voyages or in employment on a railroad, a steamboat or other vessel, or (3) reside elsewhere than in Canada, Newfoundland, Europe or the United States, or (4) between the 15th days of June and November in any year, reside in any part of the United States south of the 36th degree of North Latitude, or in Europe south of the 42nd degree, this Policy shall be void, and all payments made upon it shall be forfeited to the Company.

II.—The Company does not insure against self-destruction in any form, or against death in consequence of the violation of law, should the death of the insured occur within three years of the date hereof.

III.—Upon the death of the insured, the claimant shall make proof thereof in writing by oath or solemn declaration, including such further information about the said death, the claim, and the age of the insured, if not previously admitted, with duly authenticated evidence establishing each claimant's interest in this Policy, as the Directors shall think reasonable, and no suit or action shall be brought against the Company on this Policy after one year from the said death. The age of the insured will be admitted by the Company on due proof, but if under-stated and not so admitted, the amount of the insurance payable under this Policy at its maturity, shall in no case be more than the premium charged would have purchased, by the Company's rates in use at the date hereof for such person's true age.

IV.—That no information or statement not contained in the application for this Policy, no notice of any facts touching said application or this Policy, however made, given, received or acquired, shall affect the Company, unless forthwith communicated in writing by the insured to the President, or Managing Director, at the Company's Head Office, and assented to by him in writing for the Company.

V.—That under no circumstances shall this Policy be held to be in force until the actual payment to, and acceptance of the first premium due thereon, by an authorized agent of the Company and the delivery to the insured of the necessary receipt signed by the Managing Director, the life of the person proposed for insurance being at the time of such payment and delivery in the same condition of health as stated in the application for this Policy.

VI.—Should the Company upon any occasion consent to renew or revive a Policy after the same has become null and void every such renewal or revival shall always be understood as in nowise creating any precedent for waiving, and not as a waiver of, any condition or agreement in the Policy or Application.

*The Following Certificates (1 to 4 inclusive) should be sworn to before a Notary Public or other officer having a seal, qualified to administer an oath, affirmation or statutory declaration, and accompany the notice of death, to enable the Company to act upon the claim as promptly as possible:*

1.—A certificate from the physician who attended the insured during his last sickness, stating particularly how long he attended him and the nature of the disease, with its duration, and the time, place and other circumstances of the death.

2.—A certificate of a disinterested acquaintance of the deceased, certifying to the time, place and fact of the death, and that the deceased was the person insured by that name in this Company.

H.I.C.A.—28

3.—A certificate from the undertaker, sexton or clergyman who officiated at the funeral of the deceased, and saw the body interred.

4.—A statement and proof of each claimant's interest in the Policy, duly authenticated, and proof of age, if not previously admitted.

SEC. 11 ACT OF INCORPORATION.—Every holder of a participating policy in the Company upon which all premiums due have been paid, shall have one vote in person for each \$1,000 insurance held by him.

### LIMITED PAYMENT LIFE 20 YEAR TONTINE.

(See page 48 *supra*.)

THE MANUFACTURER'S LIFE INSURANCE COMPANY,

HEAD OFFICE: TORONTO, ONTARIO.

IN CONSIDERATION OF THE APPLICATION FOR THIS POLICY, and of the statements and agreements therein contained, hereby made a part of this contract, and of the..... annual premium of .....Dollars, to be paid in advance to the Company, at its Head Office, in the City of Toronto, on the delivery of this Policy, and thereafter on the..... day of.....in every year (providing that when premiums for .....full years shall have been duly paid to said Company no further premiums will be required), insures the life of..... (Hereinafter called the insured) of.....in the County of .....and Province of.....and promises to pay to..... his executors, administrators or assigns, the sum of..... first deducting therefrom the balance of the current year's premium, if any, and all loans on account of this Policy, upon satisfactory proof at its Head Office, of the death of the insured during the continuance of this Policy, under the following provisions:

1. That, if after being in force three full years, this Policy shall lapse for the non-payment of any premium, note, cheque or other obligation given on account of a premium, the Company will, upon application of the insured and the surrender of this Policy within three months after such lapse, issue at insured's then age, a non-participating paid up Policy with the same provisions as this Policy, for such sum as the legal net reserve thereon at the time of lapsing (less any indebtedness hereon, will purchase as a single premium at the Company's published rates; or if, after the payment of three or more annual premiums hereon, this Policy is surrendered while in force, the Company will pay its equitable cash value, according to the rules of the Company;

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2. That, after being in force two years, providing the age of the insured has been admitted, the only conditions which shall be binding upon the holder of this Policy are that he shall make the payments hereon as herein provided. In all other respects, after the expiration of the said two years, the liability of the Company under this Policy SHALL NOT BE DISPUTED.

3. This Policy is issued and accepted under the Company's Non-Forfeitable Tontine Investment Plan upon the further following provisions printed and written, and also those on the back hereof, all of which are incorporated herein and made part hereof.

*Provision A.*—That the Tontine Dividend Period for this Policy shall be complete on the.....day of.....A.D.....

*Provision B.*—That no dividend shall be allowed or paid upon this Policy unless the person whose life is hereby insured shall survive the completion of its Tontine Dividend Period as aforesaid, and unless this Policy shall then be in force.

*Provision C.*—That ninety per cent. of the surplus or profits derived from such Policies on the Non-Forfeitable Tontine Investment Plan as shall not be in force at the date of the completion of their respective Tontine Dividend Periods, shall be apportioned equitably among such Policies as shall complete their Tontine Dividend Periods.

*Provision D.*—That upon the completion of the Tontine Dividend Period, as aforementioned, provided this Policy shall not have been terminated previously by surrender, lapse or death, the legal holder or holders of this Policy shall have the option upon its then surrender, either, first, to withdraw in cash this Policy's entire share of the assets, that is the *accumulated reserve* which shall be.....Dollars, and in addition thereto the surplus apportioned by this Company to this Policy; or, secondly, to convert the said reserve and surplus into a paid-up Policy without profits for an equivalent amount, provided always that if the amount of said paid-up Policy shall exceed the original amount of the insurance, a certificate of good health from a medical examiner of the Company, and subject to its approval, shall be required; or thirdly, to withdraw in cash the share of the accumulated surplus apportioned by said Company to this Policy, and, in addition, to continue the insurance for the original amount (the Policy being paid up by its terms), participating in future profits; but if no notice in writing shall be given to the Company of the way elected in which to apply the Tontine Dividend, within two months after the completion of the Tontine Period, then the Company may apply the Tontine Dividend in the third way just mentioned.

*Provision G.*—That after the completion of its Tontine Period, while this Policy shall remain in force it shall be entitled to all the rights and privileges of ordinary Policies of the same age and kind.

*Provision H.*—A grace of one month will be allowed in payment of Premiums, at the expiration of which time if said premium remain unpaid this Policy shall thereupon become void. But a *re-instatement* will be permitted, if application therefore be made in writing to the Company at its Head Office within two months after the expiration of the one month grace, accompanied with a certificate of good health from a medical examiner of this Company, subject to its approval, provided always that whenever advantage is taken of this grace or of the privilege of re-instatement, interest shall be paid to the Company at the rate of six per cent. per annum for the time deferred.

No provision of this contract can be changed, waived, or modified, except by a written agreement signed by the President, a Vice-President or the Managing Director of the Company.





*In Witness Whereof*, the said Company has hereunto affixed its Corporate Seal, and by its.....President and Managing Director signed and delivered this contract at the City of Toronto, this.....day of.....A.D.....

*Examined by*.....

*Registered by*.....

.....  
*Managing Director.*

.....  
*President.*

[*Endorsed on Policy.*]

PROVISIONS WHICH EXPIRE AT THE END OF TWO YEARS FROM THE COMMENCEMENT OF THE INSURANCE.

IF WITHIN TWO YEARS from the date named from the commencement of this Insurance, the insured shall die by any act of self-destruction whatever, whether he be sane or insane at the time, or if any statement made in the application or the answer given to the Medical Examiner and therein declared to be material to the contract, be untrue: or if any note, cheque or other obligation given on account of the first or second year's premium, be not paid when due; or if, without a permit the insured engage as an occupation: (1) in blasting, mining, submarine labor, the production of any explosive material, or in any naval or military service (except in the militia or volunteer corps in defence of Canada) or (2) engage in aerial or arctic voyages or in employment on a railroad, a steamboat or other vessel, or (3) reside elsewhere than in Canada, Newfoundland, Europe or the United States or (4) between the 15th days of June and November in any year, reside in any part of the United States south of the 36th degree of North Latitude, or in Europe south of the 42nd degree, this Policy shall be void, and all payments made upon it shall be forfeited to the Company; Provided however that the insured may, without previous notice to the Company, travel beyond the above limits, but in such case an extra premium shall be charged for the extra risk, equal to that charged in similar cases by other first-class Companies in Canada, but, if the extra premium be not paid at the time the extra risk begins, it shall not invalidate this Policy, but the Company shall have a lien hereon for such extra premium.

## ACCIDENT INSURANCE POLICIES.

(See Section 36, page 267).

## ACCIDENT POLICY.

Principal Sum \$.....

Premium \$.....

## THE TRAVELERS INSURANCE COMPANY.

HARTFORD, CONN.

IN CONSIDERATION of the warranties in the application for this Policy and of.....Dollars, does hereby insure.....of.....County of.....State of.....under classification.....being a.....by occupation, for the term of.....months from noon of.....18...in the sum of.....Dollars per week, against loss of time not exceeding 26 consecutive weeks, resulting from bodily injuries effected during the term of this insurance, through EXTERNAL, VIOLENT and ACCIDENTAL MEANS, which shall, independently of all other causes, immediately and wholly disable him from transacting any and every kind of business pertaining to his occupation above stated; or if loss by severance of one entire hand or foot results from such injuries alone within ninety days, will pay INSURED ONE THIRD OF THE PRINCIPAL SUM herein named, in lieu of said weekly indemnity, and on such payment, this Policy shall cease and be surrendered to said Company; or in event of loss by severance of two entire hands or feet, or one entire hand and one entire foot, or loss of entire sight of both eyes, solely through injuries aforesaid within ninety days, will pay insured the FULL PRINCIPAL SUM aforesaid, provided he survives said ninety days; or if death results from such injuries alone within ninety days, will pay.....Dollars to.....if surviving; in event of.....prior death, to the legal representatives or assigns of insured; provided:

1. If insured is injured in any occupation or exposure classed by this Company as more hazardous than that here given, his insurance shall be only for such sums as the premium paid by him will purchase at the rates fixed for such increased hazard.

2. This Policy shall not take effect unless the premium is paid previous to any accident under which claim is made; and the Company may cancel it at any time by refunding said premium, less a *pro rata* share for the time it has been in force.

3. The Company's total liability hereon in any policy year shall not exceed the principal sum hereby insured; therefore in case of a claim for full principal sum, any sums paid as indemnity within such policy year shall be deducted therefrom.

4. Immediate written notice, with full particulars and full name and address of insured, is to be given said Company at Hartford of any accident and injury for which claim is made.

Unless affirmative proof of death, loss of limb or sight, or duration of disability, and of their being the proximate result of external, violent and accidental means, is so furnished within seven months from time of such accident, all claims based thereon shall be forfeited to the Company. No legal proceedings for recovery hereunder shall be brought within three months after receipt of proof at this office, nor at all unless begun within one year from date of alleged accident.

5. This insurance does not cover disappearances, nor suicide, sane or insane, nor injuries of which there is no visible mark on the body (the body itself in case of death not being deemed such mark); nor accident, nor death, nor loss of limb or sight, nor disability, resulting wholly or partly, directly or indirectly, from any of the following causes, or while so engaged or affected: Disease or bodily infirmity, hernia, fits, vertigo, sleep-walking, medical or surgical treatment except amputations necessitated solely by injuries and made within ninety days after accident; intoxication or narcotics, voluntary or involuntary taking of poison or contact with poisonous substances, or inhaling of any gas or vapor; sunstroke or freezing; duelling or fighting; war or riot; intentional injuries (inflicted by the insured or by any other person); voluntary over-exertion; violating law; violating rules of a corporation; entering or trying to enter or leave a moving conveyance using steam as a motive power (except cable cars), riding in or on any such conveyance not provided for transportation of passengers, walking or being on a railway bridge or road-bed (railway employees excepted).

6. No claim shall be valid in excess of \$10,000 with \$50 per weekly indemnity under accident policies, nor for indemnity in excess of money value of insured's time. All premiums paid for such excess shall be returned, on demand, to insured or his legal representatives.

7. Any medical adviser of the Company shall be allowed, as often as he requires, to examine the person or body of the insured in respect to alleged injury or cause of death.

8. Any claim hereunder shall be subject to proof of interest. A copy of any assignment shall be given within thirty days to the Company, which shall not be responsible for its validity. No agent has power to waive any condition of this policy.

IN WITNESS WHEREOF, THE TRAVELERS INSURANCE COMPANY has caused this policy to be signed by its President and Secretary, and countersigned by..... District Agent at Toronto, Ontario, this..... day of.....18....

(Signed) .....	(Signed) .....
Secretary.	President.
(Signed) .....	District Agent.

Amount, \$.....

Premium, \$.....

## THE ACCIDENT INSURANCE COMPANY

— OF —

HEAD OFFICE: NORTH AMERICA. MONTREAL, CANADA.

DEPOSITED AT ALBANY, N.Y., \$100,000.

IN CONSIDERATION of the warranties in the application for this Insurance and the payment to this Company of..... Dollars, the Company does hereby insure (subject to conditions on back) ..... in the County of..... and State of ..... by occupation a..... under Classification ..... for the term of..... months, ending on the ..... day of..... 189...., in the sum of..... Dollars per week (not exceeding 26 consecutive weeks) for loss of time arising from injuries received to the person of the insured during the term of this Policy, resulting from or caused by violence, accidentally occasioned, of which there shall be *external and visible sign*, and not otherwise, and which shall, independently of all other causes, immediately and wholly disable him from the performance of his usual business or occupation, under the Classification in which he is insured hereby, or should death result from such injuries within ninety days from the date of the accident will pay, within thirty days after receipt of satisfactory proof thereof, the sum of..... Dollars to the beneficiary named in the application, if surviving, or, if dead, to the legal representatives of the insured.

*Provide*, that if the insured be injured while engaged temporarily or otherwise in any occupation rated higher than that insured under, the amount of insurance or weekly indemnity payable, shall be in amount proportionate to that which the premium which has been paid would insure under such higher classification.

Also, that if the insurance under this Policy be for both death and indemnity, the insured shall have the option of receiving one-half the principal sum insured in the event of the accidental loss of both eyes or of two complete limbs (legs or arms), instead of weekly indemnity as provided herein; and in case of such payment being accepted and received by him, the Company shall not be subject to other or further demand hereunder, and this Policy shall be delivered up for cancellation.

IN WITNESS WHEREOF, THE ACCIDENT INSURANCE COMPANY OF NORTH AMERICA has caused this Policy to be signed by its President and Managing Director, and countersigned by..... Agent, at ..... this..... day of..... 18..

(Signed) .....

(Signed) .....

President.

Managing Director.

.....Agent.

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shall be deducted

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President.

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strict Agent.

This policy is issued and accepted subject to the following conditions, viz.:

1. That no claim shall be payable hereunder, unless the premium due shall have been actually paid to a duly authorized Agent of the Company previous to the happening of any accident causing injury to, or the death of the party named in this Policy: and the Company may cancel this Policy at any time by returning said premium, less a *pro rata* part thereof for the time it has been in force.

2. That the age of the insured is not under 18 years, and shall not exceed 65 years unless additional premium is paid.

3. The amount payable in the event of death shall be minus such sums paid as indemnity within the policy year.

4. Immediate written notice shall be given to the Company at Montreal, or to the Agent who countersigned this Policy, of any accident, with full particulars thereof, so that the Company may, if it sees fit, cause the injury or body of the insured to be examined by its own medical representative. Failure to give such notice shall invalidate all claim under this Policy. This Policy shall not be valid if any *post mortem* or coroner's inquest has to be held without the Company being duly notified in time to have its medical representative present.

5. Any question as to the liability of the Company to pay any claim under this Policy shall, if the Company require, be referred to arbitration, the expense of such arbitration to be borne equally by the Company and the claimant, and no suit or proceeding at law shall be brought, or arbitration required to recover any moneys hereunder, unless the same is commenced within one year from the time of such accident, and unless affirmative proof of death be furnished within seven months from date of accident, no claim shall be valid hereunder.

6. It is distinctly understood and agreed by the insured that he shall use and observe due diligence for his personal safety and protection, and in no case shall this insurance cover disappearances nor injuries of which there is no visible external mark or sign upon the body; nor will it cover death or injury, resulting from or attributable to any of the following causes:

Disease or bodily infirmity, hernia, fits, vertigo, sleep walking, medical or surgical treatment, taking of poison, contact with poisonous substances, blood poisoning (except in the case of physicians and surgeons), inhalation of gas, duelling, fighting, quarrelling, feud, wrestling, unnecessary lifting, over exertion, suicide (sane or insane), freezing, sunstroke, self-inflicted injuries (or injuries inflicted by or at the instance of any beneficiary by this insurance), war, rebellion, riot, racing, voluntary exposure to unnecessary or obvious danger or perilous venture (unless in the humane effort to save human life), violating the rules of any company or corporation, intoxication, gymnastic sports (except for amusement), or being engaged in any unlawful or vicious act, entering or trying to enter or leaving any railway train or other conveyance using steam as a motive power, while the same is in motion: or walking or being on the road-bed or bridge of any railway (unless the party is a R. R. employee).

7. Travel and residence beyond the civilized limits of Canada, United States, Republic of Mexico, West Indies and Bermudas, Sandwich Islands Europe, Africa north of the Tropic of Cancer, the Nile, Asia Minor, and Palestine, require a written permit by the Company. Travel by regular passenger or mail lines on sea between such limits is permitted.

8. The risk taken by this Company on any one life is limited to ten thousand dollars and fifty dollars weekly indemnity; and no insurance to any further amount whether affected by policy or ticket shall hold good against the company.

9. No assignment of this policy shall be valid unless endorsed hereon and a copy furnished to the Company immediately after execution, and any claim shall be subject to proof of interest.

10. That notice shall be given to the Company of any additional insurance effected (whether life or accident) subsequent to the date of this policy.

**NOTICE OF INJURY.**—To be detached from Policy and forwarded immediately to the Accident Insurance Company of North America at Montreal, Canada, or to..... Agent, at.....

In the event of the insured meeting with accidental injury, for which he intends claiming for indemnity, the Company must have immediate notice of such accident and injury, with full particulars of the same (see conditions of Policy).

Name of injured.....Post-office address.....  
 .....Date of payment of premium.....Date of  
 accident.....hour.....State particularly  
 what you were doing, and how the accident happened.....  
 .....  
 State the nature of injury.....State the length  
 of time you will probably be disabled.....days. Give the name  
 and address of your medical attendant.....  
 When did he first treat the injury?.....

(Sign.).....

Dated at.....this.....day of.....18..

Amount, \$.....

Policy No.....

**THE MANUFACTURERS ACCIDENT INSURANCE  
COMPANY.**

HEAD OFFICE :

TORONTO, ONT.

IN CONSIDERATION OF the statements made in the application for this Policy and warranted to be true and of the sum of.....Dollars, THE MANUFACTURERS ACCIDENT INSURANCE COMPANY, (hereafter called the Company) hereby agree with.....of..... in the County of.....Province of.....by occupation.....(hereinafter called the insured) and who is classified by said Company according to their rules, as.....

THAT (subject to the stipulations and conditions of this Policy contained in and indorsed hereon which are not waivable or alterable by agents, and all of which are to be read as part of this Policy), in case by reason of external, violent and accidental means occurring during the continuation of this Policy, the said insured shall die within three months after the occurring of such accident, they, the said Company, will pay to.....the sum of..... Dollars.

Or if the said insured shall sustain any bodily injury caused by such accident as aforesaid, which injury shall by itself cause the irrecoverable loss of sight of both eyes, or loss of both legs above the ankles, or both arms above the wrists, or one leg above the ankle and one arm above the wrist, within three calendar months from the date of the said accident, then the said Company shall pay the insured the sum of One Thousand Dollars for each thousand dollars of insurance; or if the said insured shall sustain any bodily injury caused by such accident as aforesaid, which injury shall by itself cause the loss of one leg above the ankle or one arm above the wrist within three calendar months from the date of the said accident, then the said Company shall pay to the insured the sum of Three Hundred and Thirty-three Dollars for each thousand dollars of insurance; or if the insured shall sustain any bodily injury caused by such accident as aforesaid, which by itself shall totally disable him and incapacitate him from attending to his ordinary business or avocations, then the said Company shall pay the insured the sum of Five Dollars per week for each thousand dollars of insurance so long as he shall be totally disabled for business and for his ordinary vocations provided, however, that the period during which compensation for the total disablement is to be paid shall not for any single accident exceed twenty-six consecutive weeks in any one year.

This Policy is in force for twelve months, ending at noon of the.....  
day of.....189....

*Provided* always that if this Policy or any renewal thereof is obtained through any material misrepresentation or concealment by or on behalf of the insured, then this Policy shall become absolutely void, and all premiums paid in respect thereof shall be forfeited to the Company.

*Provided* also that all sums that may be paid to the Company in virtue of this Policy shall be accounted in diminution of the sums insured, and the total amount payable by the Company shall not in any case exceed the sum of.....Dollars.



IN WITNESS WHEREOF the said Company have here-  
unto set their Corporate Seal at the City of Toronto  
this.....day of.....189..

(Countersigned by) .....

*President.*

(Signed) .....

*Managing Director.*

Examined by.....

*Conditions referred to in the within Policy :*

1. This Policy shall not take effect unless the premium be paid prior to any accident on account of which claim is made.

2. Due notice must be given by the insured to the Company at its Head Office, of any change in his residence or occupation.

3. If the insured meet with an accident while engaged temporarily or permanently in any occupation of a more hazardous classification than that under which he is insured (or approximating thereto, if not mentioned in the Company's Schedule of Rates), the principal sum or weekly indemnity payable, shall be such proportion of amount herein mentioned, as the premium paid by him would insure him for under such higher classification.

4. In the event of injury, within the meaning of this Policy, occurring to the insured, notice thereof shall be given to the Company at its Head Office with full particulars both of the accident and the injury within ten days after the occurrence thereof; and in the event of an accident to the insured terminating fatally, notice as aforesaid shall be given to the Company not later than twenty-one days after the occurrence of such accident; and it shall not be sufficient compliance with this condition if such notice as aforesaid shall be given only to an agent of the Company.

5. The accidents insured against by this Policy are only such as arise directly and immediately from external visible cause, capable of direct proof, and shall not include any that may arise wholly or partially from fits, hernia, orchitis, vertigo, sleep-walking, inhalation of gas, sunstroke, freezing, disease or illness of any kind, or physical infirmity, or medical or surgical treatment,



or injury by attempted suicide (sane or insane at the time), fighting, wrestling, unnecessary lifting, over exertion, or any breach of the law on the part of the insured, or by war or invasion, or occasioned by the insured being in a state of intoxication, or committing a breach of railway by-laws, or otherwise wilfully or wantonly exposing himself to any unnecessary danger.

6. No compensation shall be payable hereunder unless any medical or other agent of the Company shall be allowed to examine the person of the insured on the occasion of any alleged injury within the meaning of this Policy, when, and so often as the same may reasonably be required on behalf of the Company; nor unless such evidence as the Directors may from time to time require shall be furnished within the space of seven days after demand in writing as to any alleged accident, injury or incapacity on the ground of which a claim shall have been made against the Company.

7. If any dispute arises respecting any claim under this Policy, the same shall be referred to the arbitration of three persons, one to be chosen by each party, and in case either party shall neglect or refuse for the space of fourteen days after request in writing to name an arbitrator, the arbitrator of the other party may appoint an arbitrator for the party so neglecting or refusing; the two arbitrators first appointed shall appoint the third; the decision of any two of such arbitrators in writing under their hands shall be final and binding on both parties.

8. The risk taken by this Company on any one person is limited to \$10,000, and \$50 weekly indemnity; and no further insurance on the person insured hereby, whether by policy or ticket, shall hold good against the Company, but the premium paid for such excess shall be recoverable on demand.

9. The Directors shall not be bound to send any notice of the renewal premium becoming due, and shall be at liberty should they see fit at any time, to decline to renew the Policy, and also may at any time cancel the Policy by repaying to the insured the premium less the *pro rata* share thereof due to the Company for the time it has been in force.

10. No renewal receipt is valid unless it is printed in office form and signed by the Managing Director and countersigned by the Agent, and no endorsement on this Policy will be held valid unless countersigned by the President or a Vice-President or the Managing Director.

## FORMS OF FRIENDLY SOCIETY CONTRACTS.

### ASSESSMENT SYSTEM.

No.....Supreme Grand Lodge.

No.....Subordinate Lodge.

## SONS OF ENGLAND BENEVOLENT SOCIETY.

BENEFICIARY



DEPARTMENT

### CERTIFICATE OF MEMBERSHIP.

\$.....

\$.....

*Whereas* Bro....., now a member in good standing of .....Lodge, No....located at....., under the jurisdiction of the Supreme Grand Lodge, of the SONS OF ENGLAND BENEVOLENT SOCIETY, hath made application bearing date the..... day of.....in the year of our Lord one thousand eight hundred and ninety.....to be received as a member in the BENEFICIARY DEPARTMENT OF THE SONS OF ENGLAND BENEVOLENT SOCIETY (which application the said Brother hath agreed shall be the basis of this contract between him and the said Society). And whereas the said Brother hath paid the fees prescribed by the Constitution and By-laws of the said Society in this behalf, and hath undertaken and hereby expressly undertakes to comply with all the laws, regulations and requirements which are or hereafter may be enacted by the said Society, and hath agreed in default of such compliance to forfeit all benefits hereunder:

IN CONSIDERATION of the premises this Certificate witnesseth that if at the time of his death the said Brother is in good standing both in the said Society and in this Beneficiary Department thereof, the said Society shall, by way of mortuary benefit, pay the sum realized by a pro rata assessment levied upon all members then in good standing in the Beneficiary Department aforesaid, being also members in good standing in the Lodges under the jurisdiction of the Supreme Grand Lodge of the Sons of England Benevolent Society, not exceeding.....Dollars, unto and for the separate use of his wife or his mother respectively, if and so far as his wife or mother respectively is made a Beneficiary by these presents, or by will, or otherwise in writing, as hereinafter mentioned, and where others than his wife or mother are so made beneficiaries, then the said Society shall pay the said sum, or the apportioned part thereof, to his legal representatives in trust for such others so entitled.

And the said Brother by these presents directs that in event of his death the mortuary Benefit payable hereunder shall be paid as aforesaid to and for the use of.....unless the said Brother revokes or varies said direction by his last will and testament, or by endorsement hereon, or by a declaration in writing identifying these presents and referring hereto, and in event of such revocation or variation then the Society shall pay the said mortuary Benefit to the legal representatives of the said Brother, in trust for such Beneficiary or Beneficiaries as the said Brother shall by indorsement hereon, or otherwise, in writing as aforesaid, appoint, or in default of appointment, then to the said Brother's legal representatives to hold as part of his estate. *Provided* that where his wife or mother, as the case may be, is made a Beneficiary as aforesaid, the said Society shall pay the said Mortuary Benefit, or the apportioned part thereof, as the case may be, to his wife or mother for her own and separate use, as hereinbefore mentioned, and the balance, if any, of the said Mortuary Benefit to the legal representatives, in trust for Beneficiaries other than his wife or mother, if any such Beneficiaries there be.

And this certificate further witnesseth that should the said Brother while in good standing both in the Society and in the Beneficiary Department thereof become wholly disabled for life, and so as to be unable to follow his own or any other vocation (providing such disability doth not arise from any immoral conduct on his part) the said Society shall, upon satisfactory proof of such total disability pay the said Brother one-half the sum that would have been payable had his death occurred at the date of such disability, and the Society shall further pay the balance of said sum at his death (provided that the said Brother at the date of his death is in good standing in the Society) to his wife or mother if Beneficiaries, or to his legal representatives in trust for Beneficiaries other than his wife or mother, as aforesaid, or in event of revocation as aforesaid, then to the Beneficiaries or Beneficiary by the said Brother appointed as aforesaid in the manner above set forth, or in default of appointment to his legal representatives to hold as part of the said Brother's estate.



*In Witness Whereof* we have caused the same to be signed by the Supreme Grand President and the Supreme Grand Secretary, and the Seal of the Supreme Grand Lodge to be affixed this.....day of.....,189....

.....Supreme Grand President.

.....Supreme Grand Secretary.

Countersigned and Attested this.....day of.....189..

.....President) .....  
 .....Secretary) Lodge No.....

No.....

\$.....

## ANCIENT ORDER OF FORESTERS

## FRIENDLY SOCIETY

BENEFICIARY CERTIFICATE.

DOMINION OF CANADA.

*THIS CERTIFICATE issued by the authority of the SUBSIDIARY HIGH COURT OF CANADA witnesseth—*

THAT Brother.....a member of Court.....  
No.....of said Order, located at.....under the  
jurisdiction of the Subsidiary High Court of Canada, is entitled to all  
the rights, benefits and privileges of membership in this Fund, and to  
designate the beneficiary to whom the sum of.....  
Dollars (without use or interest) of the Beneficiary Fund of this Order,  
shall at his death be paid.

THIS CERTIFICATE is issued upon the express condition that said.....  
.....shall, in every particular, while a member of said  
Order, comply with all the laws, rules and requirements thereof. And upon  
this further condition that the rights of the person or persons appointed by  
the said.....to receive the said.....  
shall be subsidiary to the same rights and privileges, and to no other or  
greater extent than the said.....could or might have or  
claim under the said Certificate were the same made payable to himself  
personally.

It is also understood and agreed upon that the truth of the statements and  
conditions set forth in the medical examination and application for this  
Certificate, and which forms a part hereof, are the conditions upon which  
Bro.....is entitled to all the rights, benefits  
and privileges of this Fund. And that any untruthfulness or violation of said  
statements and conditions terminates the membership of said.....  
and that said Subsidiary High Court of Canada shall not then be liable for  
the above sum or any part thereof.

HE DESIGNATES AS Beneficiary, under the condition hereof,.....  
.....bearing relation to him of.....

L. S.  
High Court.

IN WITNESS WHEREOF, the Subsidiary High Court of  
Canada has caused this Certificate to be signed by the  
High Chief Ranger and the Permanent Secretary, and  
the Seal thereof to be attached, this....day of.....  
one thousand eight hundred and ninety.....

High Chief Ranger.

Attest:.....

Permanent Secretary.

*Insurance Corporations Act.*

We, the undersigned, Chief Ranger and Secretary of Court.....No.....do hereby counter-sign this Certificate and attach the seal of this Court hereto, this.....day of.....189..

.....  
Chief Ranger.

Attest:.....

Secretary.

This Certificate is issued under the Beneficiary Fund Laws of the Subsidiary High Court of Canada, sections 1 to 20 inclusive, as printed in the General Laws of the Subsidiary High Court, 1891, on pages 49 to 55 inclusive.

No.....

\$2.000

THE GRAND LODGE OF THE  
ANCIENT ORDER OF UNITED WORKMEN.  
ASSESSMENT SYSTEM.

PROVINCE OF ONTARIO.

DOMINION OF CANADA.

*THIS CERTIFICATE issued by the authority of the GRAND LODGE OF THE ANCIENT ORDER OF UNITED WORKMEN OF THE PROVINCE OF ONTARIO, witnesseth—*

THAT Brother.....a Workman Degree member of.....Lodge, No.....of said Order, located at.....in this jurisdiction, is entitled to all the rights, benefits and privileges of membership in the Ancient Order of United Workmen of the jurisdiction of the Province of Ontario, and to designate the beneficiary to whom the sum of Two Thousand Dollars (without use or interest), of the Beneficiary Fund of the Order, shall at his death be paid.

THIS CERTIFICATE is issued upon the express condition that said.....shall, in every particular while a member of said Order, comply with all the laws, rules and requirements thereof. And upon this further condition, that the rights of the person or persons appointed by the said.....to receive the said Two Thousand Dollars shall be subsidiary to the same rights and privileges, and to no other or greater extent than the said.....could or might have or claim under the said Certificate, were the same made payable to himself personally.

It is also understood and agreed upon, that the truth of the statements and conditions set forth in the medical examination and application for this Certificate, and which forms a part hereof, are the conditions upon which Brother.....is entitled to all the rights, benefits and privileges of the Order. And that any untruthfulness or violation of said statements and conditions, terminates the membership of said..... and that said Grand Lodge shall not then be liable for the above sum or any part thereof.

He designates as beneficiary under the conditions hereof.....  
.....  
bearing relation to him of.....



IN WITNESS WHEREOF, the Grand Lodge Ancient Order United Workmen of Ontario, has caused this Certificate to be signed by the Grand Master Workman and Grand Recorder, and the seal thereof to be attached this.....day of.....one thousand eight hundred and ninety.....

.....  
Grand Master Workman.

Attest:.....

Grand Recorder.



WE, the undersigned, Master Workman and Recorder, of.....Lodge No.....do hereby countersign this Certificate and attach the seal of this Lodge hereto, this.....day of.....189....

.....  
Master Workman.

Attest:.....

Recorder.

### ASSESSMENT SYSTEM.

Indorsement made hereon in pursuance of an Act respecting insurance, Chap. 39, 55 Victoria of the Legislature of the Province of Ontario.

Besides the terms and conditions appearing in the body hereof, this Certificate is issued upon the following further terms and conditions, and are to be read as forming a part of this contract, reference being thereunto had by the numbers of the Sections and Articles of the Grand Lodge Constitution, General Laws of the Supreme Lodge, the Constitution governing Subordinate Lodges, General Laws and Standing Regulations of this Order.

CONDITIONS No. 1.—The questions and answers made by the assured in his application for membership and in his medical examination.

CONDITIONS No. 2.—Sections 13 (and its sub-sections), 20 (sub-sections 13, 15, 16, 19 and 21), 23 (sub-section 12), 32 (so far as it relates to suspension), 35 (and its sub-sections), 40, 41, 42, 44, 45, 46, 47, 48, 49 (and its sub-sections) of the Constitution for the government of this Grand Lodge now in force, and any lawful amendments or additions that may hereafter be made thereto.

CONDITIONS No. 3.—Article IV, all its Sections from 1 to 4 inclusive; Article X, Section 3, and sub-sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 all inclusive. Also Section 5 of said Article. Article XI, from the beginning down to the end of Section 5, Sections 8 and 9 of said Article. Article XII, Section 4, all being of the General Laws of the Supreme Lodge now in force, and any lawful amendments or additions that may hereafter be made thereto.

CONDITIONS No. 4.—Sections 3, 4, 40, 41, 42, 44, 45, 46, 52, 54, 55, 56, 57, 58, 59, 60, 61 (and its sub-sections 1, 2, 3 and 4) 65, 66, 68, 69, 70 (and its sub-sections 1, 2, 3, and 4), 71 (and all its sub-sections), 72 (and all its sub-sections), 73, 74, 75, 76, 77, 82, 84, 85 (and all its sub-sections from 1 to 5 inclusive), 86, 87 (and its sub-sections 1, 2 and 3), 88, 89, 90 and 92 (and all its sub-sections) of the Constitution for the government of Subordinate Lodges now in force, and any lawful amendments or additions that may hereafter be made thereto.

CONDITIONS No. 5.—Article I, Sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29 (and all its sub-sections from 1 to 14 inclusive), 30 (and all its sub-sections from 1 to 8 inclusive), 31 (and its sub-sections), 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49. Articles II, III, IV, V, VI, VII, VIII, IX, X and XI of the General Laws now in force, and any lawful amendments or additions that may hereafter be made thereto.

CONDITIONS No. 6.—Sections Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of the Standing Regulations now in force, and any lawful amendments or additions that may hereafter be made thereto.

No.....

\$2,000.

## THE SUPREME COURT

## INDEPENDENT ORDER OF FORESTERS.

(See page 141, *supra*.)

## "ASSESSMENT SYSTEM."

Now Know Ye, that in consideration of the statements and representations contained in the Application for Membership, and the answers and statements contained in the Medical Examination papers, and the provisions of the Constitutions and Laws prescribed from time to time by the Supreme Court of the Independent Order of Foresters (all of which statements, representations and provisions have been assented to by the applicant, and are, by the parties hereto, referred to and made a part of this contract), and also in consideration of the statements and declarations contained in the Obligation of Subordinate Courts, and upon the faith of all and each of which statements, representations, provisions and declarations, this Endowment Certificate is issued, by which the Supreme Court of the Independent Order of Foresters agrees to pay, and does by these presents agree to pay to Bro.....of .....on his reaching his Seventieth Birthday, and on each subsequent birthday an Annuity Benefit of two hundred dollars till the full sum of two thousand dollars is paid, less any sum paid on account of the Total and Permanent Disability Benefit;

It doth further agree to pay on satisfactory proof of Total and Permanent disability, as provided in the Constitutions and Laws prescribed from time to time by the Supreme Court, a benefit of one thousand dollars.

It doth further agree to pay to the Widow or other Beneficiary hereon designated, or to the personal representative of the said Brother, on due and satisfactory proof of his death, an Endowment Benefit of two thousand dollars, less any and all sums which may have been previously paid on account of the Total and Permanent Disability Benefit, or on account of the Annuity Benefit.

It is hereby expressly understood and agreed, that at the date of any claim accruing, the said Brother shall be a member in good standing in the Order, and not disqualified according to the Constitutions, Laws, Rules or Regulations prescribed from time to time by the Supreme Court of the Independent Order of Foresters.

In Witness Whereof, the Supreme Court has caused the signatures of the Supreme Chief Ranger and Supreme Secretary and the seal of the Supreme Court to be attached at the City of Toronto, Canada, this..... day of..... in the year of our Lord one thousand eight hundred and ninety.....

.....  
Supreme Secretary......  
Supreme Chief Ranger.



*Insurance Corporations Act.*

N.B.—“The insurance undertaken by this Society comes under the exception contained in section forty-three of the *Insurance Act* applicable to fraternal and benevolent associations and is not subject to Government inspection.”

Chambers of Court.....No.....

.....Province of.....

.. ..day of.....A.D. 189..

I,.....of the above named Court, do hereby direct that the Endowment Benefit, due at my death, on this Endowment Certificate shall be paid to the undermentioned Beneficiaries :

NAME IN FULL OF EACH BENEFICIARY.	AGE.	RELATIONSHIP TO YOURSELF.
.....	.....	.....
.....	.....	.....
.....	.....	.....

I hereby expressly agree that the Constitutions and Laws of the Independent Order of Foresters, as well as any amendments thereof which may be adopted from time to time by the Supreme Court, shall be a part of this contract, particular and special reference being made by the parties hereto to the following sections of the said Constitutions and Laws, viz.:—Sections 1, 2, 3, 26, 27, 28, 40, 42, 47, 55, 57, 59, 96, 98, 99, 103, 104, 112, 117, 120, 123, 124, 131, 132, 134, 152, 155, 159, 161, 162, 164, 165, 166, 167, 168, 169, 170, 171, 172, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 188, 194, 196, 197, 198, 203, 204, 205, 206, 207, 214, 216, 218, 219, 225, 226, 227, 228, 229, 231, 235, 236, 237, 238, 239, 240, 242, 244, 245, 246, 247, 249, 250, 251, 252, 255, 257, 260, 261, 264, 265, and 266.

I hereby further expressly agree to the provisions of Sections 187, 213 217, 222 and 258 of the Constitutions and Laws of the Independent Order of Foresters.

Signed in the Presence of

.....C. R. } (Signed).....  
 .....R. S. }

SEAL.

**SPECIAL ENDOWMENT BENEFIT.**

THIS CERTIFIES that on the.....day of.....  
189.., our well beloved Brother.....paid the sum of.....  
Dollars, enrolment fee, and was duly registered in the Special Endow-  
ment Department for \$..,000, and that upon his reaching his.....  
birthday he will be entitled to receive, as provided in the Constitutions  
and Laws of the Order, the amount of..... thousand dollars, less any  
payments which may have been previously made on account of the Total  
and Permanent Disability Benefit, or on account of the Annuity Benefit  
for aged Foresters.

Always provided and agreed, that the said Brother.....  
at the date of his reaching his said birthday, is in good standing in the  
Order, and has paid all claims of the Order at the times required by the  
Constitutions and Laws of the Order.



*In Witness Whereof*, we have caused the signatures of  
our Supreme Chief Ranger and of our Supreme Secretary  
and the Seal of the Supreme Court to be hereto affixed, on  
the.....day of.....189..

S. C. R.

S. S.

(The above is to be filled up only when the member enrolls him-  
self in the Special Endowment Department.)

**ROYAL ARCANUM BENEFIT CERTIFICATE.**

ASSESSMENT SYSTEM. (See page 34, *supra*).

THIS CERTIFICATE is issued to.....  
a member of..... Council No.....ROYAL ARCANUM, located  
at.....upon evidence received from said Council  
that he is a contributor to the Widows' and Orphans' Benefit Fund of this  
Order, and upon condition that the statements made by him in his  
application for membership in said Council, and the statements certified  
by him to the medical examiner, both of which are filed in the Supreme  
Secretary's Office, be made a part of the contract; and upon condition  
that the said member complies in the future with the laws, rules and  
regulations now governing said Council and Fund, or that may hereafter  
be enacted by the Supreme Council to govern said Council and Fund.  
The conditions being complied with, the Supreme Council of the Royal



Arcanum hereby promises and binds itself to pay, out of the Widows' and Orphans' Benefit Fund, to.....and.....  
 (executors), for the benefit of.....(daughter) a sum  
 not exceeding three thousand dollars in accordance with, and under the  
 provisions of, the laws governing the said fund, upon satisfactory  
 evidence of the death of said member, and upon the surrender of this  
 certificate: *Provided*, that the member is in good standing in this Order  
 at the time of his death; and *Provided*, also, that this certificate shall  
 not have been surrendered by said member and another certificate issued  
 at his request in accordance with the laws of this Order.

SEAL.

IN WITNESS WHEREOF, the Supreme Council of the  
 Royal Arcanum has hereunto affixed its seal, and caused  
 this certificate to be signed by its Supreme Regent, and  
 attested and recorded by its Supreme Secretary, at  
 .....this.....day of.....189..

.....  
 Supreme Regent.

.....  
 Supreme Secretary.

#### FORM OF CHANGE OF BENEFICIARY.

Council.....No.....to.....Supreme  
 Secretary, S. C. R. A., I hereby surrender and return to the Supreme  
 Council of the Royal Arcanum the written benefit Certificate No.....  
 and direct that a new one be issued to me, payable at.....

Seal of  
 Sub-  
 Council.

Attest :

.....  
 Member's Signature.

.....  
 Secretary.

No.....

\$3,000

## ORDER OF CANADIAN HOME CIRCLES.

## ASSESSMENT SYSTEM.

## BENEFICIARY CERTIFICATE.

THIS CERTIFICATE *issued by the authority of the SUPREME CIRCLE of the ORDER OF CANADIAN HOME CIRCLES, witnesseth:*

THAT.....a member of.....Circle No.....located at the.....of.....in the Province of Ontario is entitled to all the rights and privileges of members of the said Order, and to participate in the Beneficiary Fund of the Order to a sum equal to one assessment from each and every member of the Order in good standing at the time of.....death. *Provided*, that such sum shall not exceed Three Thousand Dollars. All payments made to.....under the by-laws relating to total disability or upon.....attaining the age of.....years under the by-law in respect to old age are to be taken as payments made on account of the said sum of Three Thousand Dollars, and.....now directs that at.....death the said sum of Three Thousand Dollars less all payments made under the total disability and old age clauses aforesaid be paid to.....

THIS CERTIFICATE is issued upon the express condition that the representations made in.....application for membership in the Order are true and correct in every particular, and that.....shall continue a member of this Order and shall faithfully comply with all its laws, rules and regulations.



IN WITNESS WHEREOF the seal of the Supreme Circle has been hereto attached under the hands of the Supreme Leader and Supreme Secretary this.....day of.....A.D. 18.....

.....  
Supreme Leader.

.....  
Supreme Secretary.

*Insurance Corporations Act.*

SEALED BY.....Circle No.....  
under the hands of the Leader and Secretary, this.....  
day of.....A.D. 18.....

.....  
Leader.

.....  
Secretary.

*I accept this Certificate on the above conditions.*  
.....

This Certificate is issued under and subject to the conditions contained in the Constitution and By-laws of the Order, and numbered 1, 2, 4, 5, 7, 9, 10, 14, 16, 19 and 20, titled "Laws Governing Supreme and Subordinate Circles." Also Laws 9, 10, 12, 13, 14 and 15 of the "Constitution Governing Subordinate Circles."

The receipt of a copy of the Constitution and By-laws is hereby acknowledged.

.....  
(Member must sign here.)

Seal.

No.....

ORDER OF

**CANADIAN HOME CIRCLES.**

ASSESSMENT SYSTEM.

ASSESSMENT SYSTEM.

**SICK BENEFIT CERTIFICATE.**

THIS CERTIFICATE, issued by the authority of the Supreme Circle of the Order of Canadian Home Circles, witnesseth that.....  
a member of.....Circle No..... of the said Order, is entitled to participate in the benefits of the Sick Benefit Fund of the Order, and to receive out of the said fund for any sickness or disability that shall prevent him from following his own or any business or calling, the sum of Four Dollars per week for the first twelve consecutive weeks and Three Dollars per week for the next twelve consecutive weeks of

such sickness or disability, during the continuance of this Certificate, but in no case will any indemnity or benefit be paid for a shorter period than one week, nor for a longer period than twenty-four consecutive weeks of sickness or disability.

This Certificate is issued upon the express condition that said ..... shall in every particular faithfully comply with all the Laws, Rules and Regulations of the Sick Benefit Fund, and of this Order now existing, or that may hereafter be enacted by the Supreme Circle; and should he neglect or fail to pay any levy, or assessment, as provided by the sick Benefit Law of this Order, or be suspended, or expelled from this Order, or voluntarily withdraw from participation in the Sick Benefit Fund, or from the Order, or should he engage permanently or otherwise in any of the following occupations, viz.:—Aeronaut, bargeman, car-coupler in railway yard, cartridge-maker, diver (sub-marine), employee or labourer on construction train, miner (underground), active military or naval service, powder manufacturer, or in the manufacture, use or transportation of explosive substances of any kind whatever, steel polisher, vitriol manufacturer, or unnecessary hazardous adventure of any kind, then this Certificate shall be wholly null and void, and all claims for Benefits arising or accruing therefrom shall at once cease and determine. Nor shall any Benefit or Compensation be granted for injury, disability or disease resulting from the taking of any poison, self-inflicted injury or disability, venereal diseases, duelling, carrying concealed weapons, violations of the laws of the land, riding or driving races, use of intoxicants of any kind, fighting, wrestling, lifting, jumping or other gymnastic sport, nor for any sickness or disability which may have been caused wholly or in part by bodily injury, or infirmity, or diseases existing prior to the date of this Certificate, and not stated in his application.

In Witness Whereof, we have caused this to be signed by the Supreme Leader and Supreme Secretary, and the Seal of the Supreme Circle attached this..... 189..

Supreme Leader.

Supreme Secretary.

Countersigned and the Seal of.....  
Circle No.....attached this.....  
day of.....189..

Secretary.

Leader.

Circle No.....  
etary, this.....  
A.D. 18.....

Leader.

etary.

ions.

conditions con-  
d numbered 1, 2,  
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S.

ESSMENT SYSTEM.

me Circle of the  
e said Order, is  
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usiness or calling,  
nsecutive weeks  
secutive weeks of



*Insurance Corporations Act.*

I accept this Certificate on the conditions named herein and hereon,  
and I acknowledge the receipt of a copy of the Constitution and Laws.

.....  
[Signature of Member.]

This Certificate is issued subject to the provisions of the Constitution  
and Laws of the Order, numbered 1, 3, 9, 10, and 14 of the Laws govern-  
ing Supreme and Subordinate Circles; also Laws 9, 10, 11, 12, 13 and  
15 of the Subordinate Circle Constitution.

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e Laws govern-  
11, 12, 13 and

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## GENERAL INDEX.

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BIBLIOTHEQUE DE DROIT

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## GENERAL INDEX.

[The references are to pages.]

### A.

ABANDONMENT—249

ABATEMENT—

of claim, where assessments do not realize "maximum," 61  
of benefit, where error in stating age, 250

ACCIDENT—

defined, 39, 40, 269  
kinds of, 268

- (1) happening without human agency, 268
- (2) happening with human agency, 268
  - (a) through the unintentional act of party injured, 268
  - (b) through the unintentional act of another person, 268
  - (c) through the intentional act of another person causing unintentional injury, 268
  - (d) intentional injury by another, 269

examples of,  
by jumping from platform, 270  
by exercising with Indian clubs, 270  
by lifting burdens, 270

may be caused by series of events, 270  
by disease, 270

or cause disease, 270

sunstroke is not, 270

must not be caused by voluntary exposure to unnecessary danger,  
267, 270

*e.g.*, driving on railway tracks at night, 270  
standing on steps of car in motion, 271

presumption that injury is caused by, 272

insurance against, included under "Insurance," 39

insurance, requiring license, 83

not requiring license, 84, 90

by friendly society, *lv*, 90

included under life insurance, 256

what "bodily injury," included by, 267

(a) one happening without direct intent of person  
injured, 267

(b) or happening as the indirect result of his inten-  
tional act, not amounting to exposure, 267  
stipulation to contrary must be  
just and reasonable, 267

ACCOUNTANT—*see* Auditor

ACCOUNTS—

separate, to be kept by insurance branch of society, 15  
audit of, *see* Audit  
separate, of tontine and other policies, 49  
right of policy holders to, 49

ACTIONS—

against corporations, *see* Process

ACTUARIAL—

liabilities, defined and explained, 64, 163, 106  
solvency, defined, 65  
not warranted by registry, 78, 187  
a ground of distinction of mutual from friendly societies,  
122  
statement may be sent in by friendly society, 66, 187

ACTUARIES—

Institute of, Tables, 66, 251, 253

ACTUARILY—

solvent, what companies must be, 62, 65

ADJUSTMENT—

of errors in life insurance before maturity of contract, 255

ADMINISTRATOR—

included under "Beneficiary," 33  
benefit payable to, 51

ADVERTISEMENT—

effect of, by corporation, 11  
of assessment company must bear words "assessment system," 62

AFFIDAVIT—

evidence before Registry Officer may be by, at his discretion, 70, 111,  
165  
before whom taken, 165, 324  
where filed, 232

AGE—

a material fact, 243  
effect of *bona fide* error in stating, 243, 250  
abatement of benefit on account of, 250  
no increase on account of, 252  
material in fidelity insurance, 251  
erroneous statement of, in claim, 252  
fractional part of year in error of, 255  
where, taken for purposes of contract as greater than true age, 255  
children under, insurance of, 263, 264, 265, 266  
of ten years, maximum insurance of, 263  
of twenty-one, but over fifteen years, insurance of, 266

AGENCY—*see* Chief

AGENT—

defined, 28  
general, of foreign corporation, authority of, 173  
penalty on, for unauthorized insurance, 201  
of illegal corporation, personal liability of, to assured, 203  
penalty on, for false statements or obstructing audits, 220  
knowledge of, that statements of assured in application are false, 236,  
237  
sometimes described in application as agent of applicant, etc., 237  
making unauthorized misstatements in application, 238  
must not rebate or discriminate, 280  
no person to act as, (except chief agent or manager), unless registered,  
281  
test of person being, 281  
no application to be received from unregistered, 281

**AGENTS—**

register of, 28, 282  
 duration of registry of, 29  
 how registry obtained, 29  
 revocation of registry, 29, 285  
 certificate of registry of, 281, 283

**AMBIGUOUS—**

policy construed in favor of assured, 231

**AMENDMENT—**

of constitution to be filed with Registrar, 167, 176  
     effect of, on certificate, 167  
     to be mentioned in annual statement, 176  
 of declaration of benevolent society, 88, 140

**AMOUNT OF BENEFIT payable, 305, 306****ANCIENT ORDER OF FORESTERS' Beneficiary Fund, 15****ANNUAL STATEMENT—**

(See Statement)

**ANNUITIES—**

on lives, included under "Insurance," 45  
 license to grant, 81

**APPEAL—**

from Inspector of Insurance, 75  
     Registrar of Friendly Societies, 78, 165, 226, 333  
     convictions under this Act, 203  
 security for costs of, 203  
 notice of, to Registrar, 335  
 entry of decision on, in registers, 335  
 from Master in Ordinary, 346

**APPLICATION—**

for Assessment Insurance to be stamped "Assessment System," 62  
 Child Insurance, what it must bear, 265  
 Insurance, misstatements in, must be material, 232  
     need not be false or fraudulent, 233  
     burden of proof as to, 234  
     distinction between warranty and misrepresentation in, 234  
     sometimes describes agent filling in as  
         agent of applicant, 237  
     spurious, sent in by agent, 239  
     description in, limited to date of, 240  
     is medical examination part of? 244  
     not to be received from unregistered agent, 281,  
         285  
 registry, due, defined, 69, 166  
 material on, 77, 135, 166, 167  
     duplicate copies of "rules," 77  
     financial statement, 77  
     power of attorney, 78  
 of Dominion Licensee, 100  
 time for, 100, 166  
 to be made according to form, 165  
 extension of time for, 166  
 to be accompanied with financial statement in certain cases,  
     169  
 by corporation with head office out of Ontario, 172  
 by two sections of same society, 190

**APOPLEXY—**

as an accident, 270

**APPRAISEMENT—**

of loss, 248

entry for purposes of, 249  
 insurer and assured may make joint, 250

## ASSESSMENT—

- endowment included in insurance, 45
- company, foreign, 79
- business, societies that may transact, 90
- insurance defined, 58
  - premium for, consists in uncertain sums, 58
  - benefit under, depends on collections, 58
  - company under Insurance Act of Canada, 58, 82
  - distinguished from mutual insurance, 1x, 62
  - under Dominion Act is subject to this Act, 62
  - companies liable to inspection, 62
    - but sometimes exempt from deposit, 62
    - not required to keep a reserve, 62
- system to be stamped at head of documents, 62

## ASSESSMENTS—

- misapplication of, ground for winding up, 223
- member only liable for those, of which he has notice, 287
  - may withdraw after payment of, 289
- validity of, a question for jury, 298
- illegal, effect of, 298
  - application of, 299
- forfeiture for non-payment of, 290
- notice of, *see* Notice
- liability of suspended member in respect of, 297
- who competent to make, 288
- frauds in connection with, 288
- may be levied instead of impairing reserve, 67
- levied for profit of trustees or officers are breaches of trust, 138
- when separate, to be made to meet policy, 306
- remedy for refusal to make, 306

## ASSIGNS—

- included under "Beneficiary," 33, 256
- benefit payable to, 51
- do not need to have insurable interest, 256, 258, 261

ASSOCIATION—*see* Society

## ASSURANCE—

- distinguished from Insurance, 57

## ASSURED—

- definition of, 57
- rights of, under contract of illegal insurance, 72
  - after loss, 248,

## ATTENDANCE—

- medical, may be material fact, 242

## ATTORNEY—

- foreign corporation must be represented by power of, 63, 158, 172, 173

## AUDIT—

- duty on insurance corporation to have, 20, 208
- special, by registry officer, 18, 20, 207, 210, 216
- not binding on members, 210
- default of, suspension of society for, 211
- requisition for, by 25 members, 216
- security for costs on, 219

## AUDITOR—

- appointment of, by registry officer to audit books of insurance corporation, 18, 20, 207, 216
- expenses of, 18, 21, 207, 218
- what his right extends to, 21, 210
- how accredited, 21
- obstruction of, 21, 211, 218, 220, 221
- report of, 21, 221
  - decision of registrar on, 221
- of corporation not to be an officer, 208
- duties of, 209

## B.

**BALANCING—**

day of corporation, 169

**BANK OF MONTREAL—**

Pension Fund Society, 148

**BENEFICIARY—**

committee of Ancient Order of Foresters, 16  
department of fraternal order; *see* Branch  
fund of Ancient Order of Foresters, 15  
definition of, 33

**BENEFIT—**

definition of, 32  
payment of, not voluntary, 33  
insurance founded on contract, 37  
*see* Society or Friendly Society, forfeiture, etc.

**BENEVOLENT SOCIETY—**

included under "Society," 11  
meaning of, 11  
proviso respecting, 11  
legislation, history of, 111  
*see* Friendly Society  
*see* R. S. O. 1887, c. 172

**BOARD OF TRADE OF TORONTO—**

entitled to registry, 155  
organization of, 155

**BODILY INJURY—*see* Accident****BOILER INSURANCE, 44****BONDS—**

insurance on, 44

**BONUS—**

included under Benefit, 33

**BOOKS—**

separate, to be kept by insurance branch of society, 15  
what, to be kept, 18, 207  
appointment by Registry Officer of accountant to audit, 18, 207  
the property of the society, not of agents, 18, 67, 219  
reason of rule, 67  
false entry in, penalty for, 19, 220  
refusal to make entry in, 19, 220  
member's right to inspect, 19, 319  
which, right extends to, 19  
disorder in, a ground for winding up, 208  
proper audit of, at least once a year, 208  
Registrar has access to, 219, 317  
are evidence of membership, 287, 288  
of receiver to be accessible to Registrar, 346  
penalty on, for refusing access, 346

**BRANCH—**

when equivalent to Society, 15  
of corporation for purposes of insurance, 15, 17  
separate funds, etc., to be kept by, 15, 57  
or lodge represented by central body, 22  
defined, 23, 24  
insurance funds belonging to, 57

**BROKER—**

must not rebate, 280  
*See* Agent

**BROTHER—**

insurable interest of, 260  
H.I.C.A.—80

**BUILDING SOCIETY—**

effect of lapses in, 53  
deposit of surplus funds with, 212, 215

**BURDEN OF PROOF—**

as to amount of benefit, on society, 35, 305  
as to registry, 71, 204  
as to truth or falsity of statements in application for insurance, 234  
of exposure to unnecessary danger, 272

**BURGLARY—**

insurance against loss from, 44

**BUSINESS—**

not included among objects of friendly society, 115, 116

**BY-LAWS—**

are Rules, 68  
of railroad relief associations protecting Co. from claims, 147  
how far new, affect existing contracts, 168

## C.

**CANADA GAZETTE—**

notice in by Superintendent, 108  
effect of, 108

**CANADA—**

societies incorporated under special Acts of, 141

**CANADIAN—**

Mutual Life Association, 102  
Order of Home Circles, 125  
Pacific Railway Employees' Relief Association, 147

**CANCELLATION—**

of license, 26, 98, 99, 105, 184  
proceedings after, 108  
of registry, 21, 26, 98, 105, 184, 193, 316  
notice of, 193  
*ipso facto* by certain events, 325

**CARD—**

effect of, with corporate name, 11

**CASH MUTUAL—**

fire company, insurance by, is not "assessment insurance," 58, 59

**CASUALTY—**

insurance against, included under Insurance, 39  
re-insurance value in, 65  
under life insurance, 256

**CENTRAL—**

governing body treated as society, 22

**CERTIFICATE—**

of registry, 75, 77, 182  
under cap. 124 : 101  
good for 1 year, 101  
what it specifies, 182  
what it is evidence of, 199  
beginning and end of term in, 197  
interim, 185  
as agent, 281  
of membership, *see* Membership  
of revivor of registry, 310

- CERTIFIED COPIES—**  
 of entries in Registers, 74, 77, 198, 332  
 of constitution, by-laws, etc., 77
- CHANGE—**  
 of name of corporation, 191  
 physical and mental condition, insurance against, 39
- CHARITIES—**  
 societies having charge of, 85
- CHARTER—**  
 repeal or expiry of, effect on registry, 27, 325
- CHIEF AGENCY—**  
 definition of, 69  
 to be entered in License Register, 73, 180  
 to be declared in application, 173  
 to be entered in Registers, 180
- CHIEF AGENT—**  
 appointment and powers of, 177, 173  
 change of, proceedings to be taken after, 176  
 to be entered on Register, 180  
 need not register as agent, 281
- CHILDREN—**  
 endowment insurance of, xxxix, 47  
 under ten, maximum insurance of, 263  
     except (a) existing insurance, 264  
     (b) in case the beneficiary has a pecuniary interest, 264  
     where maximum exceeded, premium to be recoverable, 264  
     what must be printed on policies of insurance of, 265  
 and wives, insurance for benefit of, 361
- CHOMAGE INSURANCE—**  
 development and peculiarities of, 42
- CIRCULAR—**  
 in name of insurance corporation, effect of, 11  
 of assessment company must bear words "assessment system," 62  
 of child insurance must bear section 35 printed on it, 265
- CLAIM—**  
 payment of undisputed, within 60 days, 26, 217, 305, 311  
     unless a shorter period contracted for, 317  
     forfeiture of registry otherwise, 107  
     renewal of registry in such cases, 108  
 amount of, 305, 306  
     how computed, 306  
 on particular fund, 307  
 right of person having, to inspect books, 308, 319  
     affidavit by, 320
- CLERK OF PROCESS—**  
 filings with, 175
- COLLECTION—**  
 of premiums, effect of, 11, 67
- COLLECTIVE—**  
 policies against accident, 52
- COLLECTOR—**  
 defined, 67  
 penalty on for unauthorized insurance, 201
- COMMENCEMENT—**  
 date of, of Act, 9
- COMMERCIAL—**  
 gain, society for purposes of, not entitled to register, 94  
 Travellers Mutual Benefit Society, 102



- COMMISSIONS—  
insurance of, 42
- COMMITTEE—  
beneficiary, of Ancient Order of Foresters, 16  
of G. T. R. of Canada Superannuation and Provident Fund, 17  
*see* Branch
- COMPANIES ACT 1862 (Imp.), 94
- COMPANY—  
definition of, in Ontario Insurance Act, 14, 79  
*see* Corporation, Joint Stock, License
- COMPLAINANT—*see* Prosecutor
- COMPROMISE—  
and adjustment, 255, 256
- COMPUTATION—  
of amount of benefit, 305, 306  
of time of payment, 311, 312
- CONDITION—  
insurance against change of, 39, 256
- CONDITIONS—*see* Policy, Statutory Conditions
- CONSIDERATION—  
true, must appear in contract, 280
- CONSTITUTION OF SOCIETY—  
provisions of, are "rules," 68  
certified copies of, 77  
when important to be considered, 84  
*see* "amendment," "rules," etc.
- CONTINGENT—  
event, contract for benefit payable on, is "Insurance," 54
- CONTRACT—  
definition of, 30  
oral, 30
- CONTRACTS—  
of Insurance, offering to undertake, 11, 14  
definition of, 80  
by telephone, 30  
under seal, estoppel by, 31  
not under seal, company cannot set up lack of seal, 31  
of insurance not always contracts of indemnity, 35  
of assessment insurance, must bear words "assessment system," 62  
lawful, before passing of Act not affected, 72, 93  
of friendly society, legislative recognition of, 117  
are benefits of friendly society equivalent to? 123  
how far affected by new by-laws, 168  
material terms of, how to be set forth, 227, 231
- CONTROL—  
over subordinate lodges, what constitutes, 22
- CONVICTION—  
penalties on first and second, 201
- CO-OPERATIVE ASSOCIATION—  
included under society, 11
- COPIES—  
by Queen's Printer, 136  
*see* certified
- CORPORATE POWERS—  
conferred on benevolent societies, 113  
revocation of, 118, 134, 222, 327

**CORPORATION—**

meaning of, 56  
 what included under society, 11  
 effect of sign or circular with name of, 11  
 compared with "Company" under Ontario Insurance Act, 14  
 registered, meaning of, 24  
 unregistered, meaning of, 124  
     insurance by, 25, 70  
 Dominion licensee is a, 71  
 transacting insurance without authority, 71  
 registers, *see* "Registers"  
 requiring license not entitled to register as friendly society, 78  
 what, requires license, 81  
 name of, not conclusive as to its objects, 88  
 having less than 50 members not entitled to register, 95  
 when a person is deemed a, 101  
 forfeiture of powers by non-user, 102  
 with insurance company annexed, when entitled to register, 145  
 having authority to create a fund for relief, entitled to register, 154  
 not to be registered under misleading name, 189  
     nor under unauthorized new name, 190  
 change of name, by order-in-council, 191  
 notice to, how served, 314

**COSTS—**

of proceedings by registry officer, or receiver, 351  
 security for, on appeal from conviction, 203

**COURTS—**

how far they will reverse decisions of society's tribunal, 303

**COVENANT MUTUAL BENEFIT ASSOCIATION—**

of Illinois, 104

**CREDITORS—**

protection from claims of, on insurance moneys, 91  
     first provision for, 115  
 have insurable interest, 258

**CUSTOM—**

insurance against loss of, 41

**D.****DAMAGES—**

will action for, lie against Registry Officer, etc., 110

**DANGER—**

*see* Voluntary Exposure

**DATE—**

of commencement of Act, 14th April, 1892 : 9  
 within which unregistered Cos. to cease business, 31st December, 1892 : 70  
 before which society had to be organized to effect insurance, 10th March, 1890 : 87, 118, 127  
 of opening registers, 1st July, 1892 : 97  
 expiry of insurance license (Ont.), 30th June in every year, 97  
 of applications, before 30th June, 1892 : 100  
 before which society must have obtained Dominion Special Act, 1st Jan., 1892 : 141  
 after which further penalties on unauthorized insurance, 31st Dec. 1892 : 199  
 after which no rebating or discrimination, 14th April, 1892 : 280, 287  
 after which unregistered agent cannot act, 1st Jan., 1893 : 287

**DAUGHTER—**

insurable interest of, 260

**DEATH—**

insurance against included in Insurance, 39

**DEBENTURES—**

power of friendly society to borrow on, 119

**DECLARATION OF BENEVOLENT SOCIETY—**

changes in, 88, 89

origin of, 113

contents of, 114, 115

how filed, 114, 115

where insurance mentioned in, 128

operation according to, meaning of, 128, 136

cannot be amended to include insurance, 128

must include insurance, 130

when and how amendable, 140

**DEFALCATIONS—**

legislation to check, in Benevolent Societies, 112, 113

**DEFINITIONS AND INTERPRETATIONS, 1-70****DEPARTMENT OF SOCIETY, *see* Branch****DEPOSIT—**

by Insurance Co., 103

none by Friendly Society, 104, 187

depreciation of securities on, 105

**DEPRECIATION—**

of securities on deposit, 105

**DEPUTY—**

registry officer includes, when, 11, 199

**DIFFERENTIAL RATES—**

not to be given, 280

**DIRECTOR—**

penalty on, for unauthorized insurance, 201

**DISABILITY—**

insurance against, included in Insurance, 39

“ “ Life Insurance, 236

meaning of, 40

total, 40

temporary and permanent, 41

friendly society insurance against, 90

**DISCRIMINATION BETWEEN ASSURED—**

prohibited, 277

to what companies, 207

as to what amount, 278

what constitutes, 278, 279

rebating is, 279

effect on contract, 279

consequences of—

(1) balance of premium not recoverable from assured, 279

(2) contract not enforceable by assured, 279

**DISEASE—**

meaning of, 242

**DIVISION OF SOCIETY—*see* Branch****DOCUMENT OF AUTHORITY—*see* License****DOMICILE—**

of corporation, 68

## DOMINION—

Bank Guarantee and Pension Fund, 148  
Building and Loan Association, form of certificate, 50  
*see* License, Jurisdiction, etc.

## DONATION COMPANIES, 85

how far benefits of society are equivalent to, 123

## DUE APPLICATION—

defined, 69, 100

## E.

## EDUCATIONAL ENDOWMENT INSURANCE, 47

## ELECTION OF OFFICERS—

fraud in, a ground for winding up, 224

## EMPLOYEE OF CORPORATION—

penalty on, for unauthorized insurance, 201

## EMPLOYERS' LIABILITY INSURANCE, 51, 52

collective policies of, 52

varieties of policies of, 52

against costs of actions, 52

against actions under statute, 52

at common law, 52

premiums for, and mode of payment, 53

and servants, insurable interest of, 259

## EMPLOYMENT—

insurance against loss of, 41

## ENDOWMENT INSURANCE—

included under Insurance, 45

ordinary, 45

limited payment, 45

reducible term, 46

whether a contract of insurance proper or of investment, 46

how far friendly societies may transact, 14, 46, 92, 127

infant, 47

by friendly society, 92

## ENTRANCE FEE—

when equivalent to premium,

## ENTRIES—

on register, 180

*see* Register

## ENTRY—

after loss, 246

insurer has immediate right to, but not to salvage, 246

refusal to allow, effect of, 247

after separation of damaged property, 249

ERROR—*see* misrepresentation, age, etc.

## ESTIMATE—

of loss, 248

## ESTOPPEL—

of company by knowledge or error of agent, 229

**EVASION—**

attempted, by Insurance Co. calling itself a benevolent society, 88, 96

**EVIDENCE—**

required by Registry Officer, 69, 70

may be made on oath, or by affidavit, etc., 70, 111, 165, 221

of Dominion license, 100

of registry, official lists, 195, 196, 283, 284

copies by Queen's Printer are, 196

seal or signature of Registry Officer, 596

certificate of registry officer is, of contents, 197

of incorporation of extra-provincial corporation, 199

of happening of events that cancel registry, 331

of membership, 287, 288

of default of receiver, 348

of loss or happening of event, 312

what is sufficient, 312

form of unimportant, 312

delay in furnishing, 313

waiver of, 313, 314

**EXAMINATION—**

of the property, insurer's right to, after loss, 246

**EXCLUSIVELY—**

company not organized, for insurance, 15

contracts not made, with members, 90

**EXECUTIVE OFFICERS—**

head office follows, 68

**EXECUTORS—**

included under beneficiary, 33

benefit payable to, 51

**EXPECTANCY OF LIFE—**

contract based on, 51

**EXPOSURE—**

to unnecessary danger, 40

**EXPULSION—**

illegal, 304

remedy for, 304

**EXTENSION—**

of time for registry, 168

of registry, 186

**F.****FATHER—**

insurable interest of, 259, 265, 266

**FALSE—**

numbering of certificates of membership, 225

**FAMILY—**

materiality of statements as to, 245

**FEE—**

membership or joining, is a premium, 30, 201

**FEES—**

payable by Provincial licensee, 97

Dominion licensee, 100, 105

under this Act, tariff of, 351

**FIANCEE—**

insurable interest of, 259

society, 88, 96

221

# FIDELITY—

- a subject matter of insurance, 51
- insurance, by bonds, 52
  - re-insurance value in, 65
  - age material in, 251
- bonds, duration of, 32

# FILINGS—

- with Clerk of Process, 175

# FINANCIAL—

- loss, insurance against, 39
- basis of society not warranted by registry, 78, 187
- statement of society, 136

# FINE—see penalty

# FIRE INSURANCE, 44

- re-insurance value in, 65
- under R. S. C., c. 124 : 81
- statutory conditions in, 227

# FOREIGN—

- corporation must be represented by attorney, 68, 172
  - chief agency of, 69
- resident of Ontario may contract with and send premium to, 72
- must have 500 resident members, 95
- under s. 39, R. S. C. c. 124 : 104
- status of, 156
- may sue and be sued in corporate name, 156
- can it contract out of its own territory? 157
- service on—see process
- evidence of due incorporation, 199
- Assessment Endowment Co. not entitled to register, 79
- friendly societies see Friendly Society,
- Mutual Life Co. not entitled to license under c. 167 : 78

# FORESTERS—see Ancient Order

see Independent Order

# FORFEITURE—see Lapses

- of benefits, 290
  - no, for non-payment of assessments, 290
    - unless payable at fixed dates, 290
    - or notified to member, 290
  - not favored by Courts, 290
  - waiver of, 294
    - when it requires consideration, 295
- conditions of, to be just and reasonable, 303
- court to decide on, 303
  - may reverse decision of society's tribunal, 303

# FORM—

- printed in name of corporation, effect of, 11, 15

# FORMS AUTHORIZED BY INSURANCE DEPARTMENT—

- (1) Application for registry as insurance licensee, 389
- (2) Treasury receipt for application fee, 397
- (3) Power of attorney, 398.
- (4) Treasury receipt for certificate fee, 401
- (5) Certificate of registry as insurance company, 402
- (6) Treasury receipt preliminary to registry as Provincial licensee, 403
- (7) Provincial license to insurance companies, 404
- (8) Annual document of authority under *Insurance Act*, 405
- (9) Application for registry as friendly society, 405
- (10) Form of affidavit verifying financial statement, 410
- (11) Change of corporate name, form of direction, 417
- (12) form of notice in *Gazette*, etc., 417
- (13) Certificate of registry, 418
- (14) Receipt for agents' license fee, 419

## FORMS AUTHORIZED BY INSURANCE DEPARTMENT—

- (15) Application for registry as agent, 420
- (16) Recommendation for registry, 421
- (17) Agent's certificate of registry, 421
- (18) Notice to state objections to registry, 422

## FORMS OF POLICIES AND CONDITIONS—

- reducible term endowment policy (People's Life), 425
- life, with profits, (Canada Life), 427
- 20 payment life—semi-tontine policy (North American Life), 431
- limited payment life, 20 year tontine (Manufacturers' Life), 434
- accident policy (Travellers of Hartford), 437
- (Accident Ins. Co. of N. A.), 439
- (Manufacturers' Acc. Ins. Co.), 442
- friendly society contracts, certificate S. O. E. B. S., 445
- A. O. Foresters, 451
- A. O. United Workmen, 448
- Independent Order of Foresters, 451
- Royal Arcanum, 452
- Canadian Home Circles, 455

FRATERNITY—*see* Society, Friendly Society

## FRAUD—

- registry obtained through, may be revoked, 193
- special audit where, alleged, 216

## FRIENDLY SOCIETY—

- meaning of, 11
- meaning of, in Imperial Acts, 11
- distinction between, and licensed company, 12, 95
- benefits how far affected by insurance legislation, 13
- with whom, may undertake, 39
- what contracts, may undertake, 39
- liability of member of, 60
- not affected as to life insurance by R. S. C. c. 124: 83
- no Government inspection of, 62, 187
- not permitted to make a deposit, 62, 104, 187
- reserve fund of, is matter of internal regulation, 66
- will not be interfered with by court in its methods of insurance, 66
- may require members to pay assessment before it impairs reserve, 67
- Register, 76
- not entitled to license under Ontario Insurance Act, 78
- company requiring license cannot register as, 79
- incorporated before 10th March, 1890, under c. 172 may insure, 87, 88
- incorporated after 10th March, 1890, under c. 172 cannot insure, 88
- name of, not conclusive as to its objects, 83, 96, 123
- change of declaration of, 89
- limit to insurance by, 90-92
- impediments to registry of, 92
- legislation, history of, 111
- legislative recognition of contracts of, 117, 123, 126
- revocation of corporate powers of, 118
- power to borrow on debentures, 119
- distinguished from mutual company, 119
- prima facie* solvency only inquired into, 122
- primary object is not insurance, 123
- does Act to secure to Wives and Children the benefit of Life Insurance apply to? 126
- incorporated under Benevolent Society Acts, registry of, 128
- acting *ultra vires*, 131, 132
- quo warranto* against, 133
- can members apply for *quo warranto*, 134
- term of office in, 136
- powers of officers of, 137
- must be under control of members, 138

ENT—

Life), 431  
 Life), 431  
 45  
 451  
 workmen, 448  
 ler of Foresters,  
 451  
 452  
 Circles, 455

insurance, 66  
 rs reserve, 67

insure, 87, 88  
 t insure, 88

of Life Insur-

128

**FRIENDLY SOCIETY—**

control of, by proxies, 138  
 incorporated by special Act of Dominion is entitled to registry, 141  
 Independent Order of Foresters entitled to register as, 141  
 Grand Orange Lodge entitled to register as, 143  
 G. T. R. Superannuation Fund entitled to register as, 145  
 foreign, registration of, 158  
     requisites:—  
     (a) must be solvent, 158, 159  
     (b) must have authorized attorney in Ontario, 158, 159, 172  
     (c) must have been in *bona fide* operation in Ontario before  
         11th March, 1890: 158, 160  
     (d) must have 500 Ontario members, 158, 160  
     (e) must be within meaning of Benevolent Society Act, 158,  
         160  
     (f) must pay fees, 162  
     when ineligible, 161  
 under Friendly Societies Act, 1875 (Imp.), is duly incor-  
     porated, 162

organization of, 162  
 reserve fund of, in Ontario, 179  
 registry does not authorize, to undertake out of Ontario, 188  
 misrepresenting registry, penalty on, 189  
 not to be registered under misleading name, 189  
     nor under changed name, 189  
 application by two sections of the same, 190  
 name of, may be changed by Order in Council, 191  
     proceedings and rights not affected by change in, 191  
 default of, is default of officers, 211  
 must deliver copy of its rules to anyone tendering twenty-five cents,  
     226  
 does 14 Geo. III. c. 48, apply to? 262  
 minor may be member of, 266  
 tribunals of, attitude of courts to, 303

**FUND—**

beneficiary, of Ancient Order of Foresters, 15  
 endowment, on prohibition of business to be distributed, 93

**FUNDS—**

separate, to be kept by insurance branch of society, 15  
 insurance, are trust funds, 96  
 reserve, in Ontario, 179

**FUNERAL BENEFITS—90****G.****GOOD FAITH—**

required in all contracts of insurance, 241

**GOOD STANDING—**

meaning of, 16

**GOVERNING BODY—**

central, treated as the society, 22  
 within Province, when so treated, 23

**GRACE—**

days of, 30 allowed to pay assessments, 290  
     effect of death during, 293  
     payment after, 295  
     60, allowed society to pay claims, 211  
 how affected by repudiation of contract, 312



- GRAND ORANGE LODGE OF BRITISH AMERICA—**  
 words required to be printed on policies of, 63  
 penalty for neglect, 64  
 limit to insurance by, 92  
 powers of, 144  
 branch lodges under, 144  
 may register as friendly society, 141
- GRAND TRUNK RAILWAY SUPERANNUATION FUND, 17, 145**  
 incorporation of committee, 145  
 committee—  
   entitled to register, 145  
   of, 146  
 management of fund, 146  
 by-law protecting Co from claims, 147
- GRANDDAUGHTER—**  
 insurable interest of, 260
- GRANDSON—**  
 insurable interest of, 259
- GRATUITIES—**  
 companies engaged in distributing, 85
- GREAT WESTERN RAILWAY SUPERANNUATION AND PROVIDENT FUND, 147**
- GUARANTEE CAPITAL—**  
 provisions relating to, 121.
- GUARANTEE COMPANY—**  
 as security for receiver, 345
- GUARANTEE INSURANCE—**  
 re-insurance value in, 65
- GUARANTEE AND PENSION FUND—**  
 of Dominion Bank, 148

## H.

- HAIL STORM INSURANCE, 44**
- HEAD OFFICE—**  
 defined, 63  
 to be entered on License Register, 73  
 elsewhere than in Ontario, application by corporation with, 172  
*see* Governing Body
- HEALTH—**  
 as a subject-matter of insurance, 51  
 insurance of, included under life insurance, 256  
 office, 39  
 good, meaning of, 241  
 sound, meaning of, 242
- Hm TABLE, 251, 253**
- HOME BENEFIT—**  
 Association of Massachusetts, 104
- HOME CIRCLES—**  
 Canadian Order of, 125
- HURRICANE INSURANCE, 44**

**HURT—**

meaning of, 242

**HUSBAND—**

insurable interest of, 260

and, children, insurance for benefit of, 363

## I.

**ILLEGAL PURPOSE—**

corporation existing for, registry of, may be revoked, 193

**ILLNESS—**

severe, meaning of, 242

serious, meaning of, 242

nonpayment of dues during, 298

**IMPRISONMENT—***see* penalty.**INCENDIARISM—**

risk of, a moral risk, 240

**INCOME—**

insurance against the loss of, 41

**INCORPORATION—**

what is sufficient evidence of, 195, 199

**INDEMNITY—**

insurance not always a contract of, xlv, 36

or re-instatement, 44

**INDEPENDENT ORDER OF FORESTERS—**

words required to be printed on their policies, 63, 143

penalty for neglect, 64, 143

limit to insurance by, 92

incorporation of, 141

objects of, 141

head office of, 142

powers of branches of, 142

disposition of surplus fund, 142

certified copies of constitution, etc., 143

may register as friendly society, 144

**INDIAN CLUBS—**

accident from exercising with, 270

**INDIVIDUALS—**

undertaking of insurance by, 200

**INDUSTRIAL ASSOCIATION—**

included under Society, 11

**INDUSTRIAL LIFE INSURANCE, xl****INFANT ENDOWMENT INSURANCE, xl, 47****INFIRMITY—**

insurance against, included under Insurance, 39

under life insurance, 256

**INFORMATIONS—**

to be laid within 1 year, 204

**INJURIES—**

intentional, 40

**INSANITY—**

insurance against, 39, 41

meaning of, 41

**INSOLVENCY—**

- meaning of, as respects friendly society, 66
- special audit, in case of, 216
- when alleged, what inquired into, 217
- by non-payment of claims for 60 days, 225
- suspension of registry for, 315

**INSPECTOR—**

- means Inspector of Insurance, 9
- of Insurance, duties of, 10
  - to keep insurance license register, 73
  - duty on, of determining what companies entitled to register, 75, 109
  - appeal from, to Divisional Court, 75
  - certificate issued by, 75
  - duty of, as to cancellation of license, 99
  - will mandamus lie against? 109
  - will action for damages lie against? 110
  - powers of, under this Act, are additional, 110
  - may examine witnesses on oath, 111
  - remuneration of, 111
  - origin of office, 122

**INSURABLE INTEREST, 51**

- necessary to life insurance, xxxvii, 256
- effect of, 14 Geo. III., c. 48: 256
  - attempted evasion, 258
- assignee of policy does not need, 258, 261
- only necessary in original parties, 258
- of trustees, 258
- of creditors, 258
  - unless debt illegal, 258
- employer and servant, 259
- fiancee, 259
- father, 259
- sister, 259
- grandson, granddaughter, son-in-law, 259
- mere relationship is not, 250
  - is evidence of, 260
- of husband and wife, 260
  - brother, 260
  - nephew, uncle, adult son, stepson, mother and daughter, 260
- person by whom premiums paid, 261
- in case of children under ten, 263, 264
  - under twenty one, xlii, xlvii, 265

**INSURANCE ACT, The Ontario,—see R. S. O., 1887, c. 167**

**INSURANCE ACT of Canada—see R. S. C., c. 124**

**INSURANCE AGENTS—see agents.**

**INSURANCE CORPORATION—**

- meaning of, 56
- Corporations Act, 1892—see 55 Vic. c. 39, and various titles.

**INSURANCE—**

- effect of undertaking, 11
- what constitutes "offering to undertake," 11
- fund, definition of, 57
  - see also Branch
- definitions of, 35
- includes "primary" and "re-insurance," 35
- not always a contract of indemnity, 36
- terms, how interpreted, 55
- distinguished from assurance, 57
- on the assessment system defined, 58

**INSURANCE—Continued.**

unauthorized, avoids contract, 72  
 premium cannot be recovered, 72  
 unless contract executory, 72  
 premium note also void, 72

License Register, 73

Act of Canada, *see* R. S. C. c. 124

Act, Ontario, *see* R. S. O. 1887, c. 167

is a contract, not benevolence, 86

for benefit of wives and children, *see* Wives

meaning of, under section 38: 277

**INSURER—**

definition of, 57

**INTEMPERATE—**

meaning of, 245

**INTENDED WIFE—**

insurable interest of, 259

benefit paid to representatives instead of, 262

**INTENTIONAL INJURIES, 40**

**INTEREST—***see* Insurable Interest

**INTERIM RECEIPT, 30**

receiver, treasurer as, 73, 100

certificate of registry, 169, 185

**INTERNATIONAL—**

Fraternal Alliance, 83, 202

**INTERPRETATION—**

and definitions, 1-70

**INTOXICATING LIQUORS—**

use of, materiality of, 244, 304

**INVALIDATED—**

contracts before the passing of this Act not, 93

**INVESTMENT—**

contracts of, involving life contingencies, 45, 50  
 of surplus insurance funds, 212

(a) first mortgage on fee simple

(b) registered debentures, under 54 Vic. c. 19

(c) municipal debentures

(d) securities of Dominion or Province

(e) on deposit at bank or building society, etc., 215, 216

**J.****JOINING FEE, 30****JOINT APPRAISEMENT—**

effect of, 250

**JOINT STOCK CO.—**

requires license, 81, 94

definition of, 94

**JURISDICTION—**

of Dominion, xxiii, 80

of Province, xxiii, 82

**JUST AND REASONABLE, 273**

variation in statutory conditions is *prima facie* not, 273

variation more stringent than provision is not, 274

who determines whether variation is, 274

condition as to abstinence is, 304

## K.

## KNIGHTS—

of the Maccabees, certificate of, 34  
of Honor, " 34

## KNOWLEDGE—

of agent or insurer that statement in application for insurance is false, 236

## L.

## LAND TITLES ACT—

insurance under, 70, 71

## LAPSES—

included under Insurance, 53  
exception, 53  
meaning of, 53  
in Building Society, 53  
in Joint Stock Company, 53

## LEASE POLICIES, 42

## LEGISLATURE—

means Legislature of Ontario, 9

## LIABILITY—

through the death of another, insurance against, 51  
of member of friendly society, 60  
determination of, by withdrawal, 289  
of policy holder in mutual, 60

## LICENSE—

under Insurance Act of Canada, effect on registry of, 26, 71, 76, 100, 183  
contents of, 75  
Ontario Insurance Act, effect on registry of, 97, 126  
contents of, 74  
cancellation or suspension of, 26, 97-99, 105, 327  
company requiring, cannot register as society, 79  
Register, 73  
definition of, includes Dominion License, 76  
publicans', insurance against loss from non-renewal, 44

## LICENSED COMPANY—

distinguished from Friendly Society, 12  
definition of, 76, 277  
required by law to be, meaning of, 81

## LICENSEE—

of Province, registry of, 97  
of Dominion, registry of, 100, 101, 183, 184  
every, deemed a corporation, 101  
need not file financial statement, 169  
policies issued by, must not contravene this Act, 308

## LICENSEES—

definition of, 101

**LIFE—**

- what it includes, 256
- contract based on expectancy of, etc., 51
- Insurance is a contract, not benevolence, 86
  - not a contract of indemnity, 36
  - on assessment plan, 62
  - re-insurance value and reserve, 65
  - under R. S. C. c. 124 : 81
  - stages in history of, 86
  - mutual, 119, 120
  - double authorization required before undertaking, 200
  - conditions in, to be fully set forth, 228
  - degree of good faith required in, 241
  - duty of applicant for, to make true answers regarding health, 241
  - adjustment of error in contract of, before maturity, 255

**LIFE-TIME BENEFITS—**

- included in insurance, 45

**LIMIT—**

- of Benevolent Society insurance, 90-92

**LION PROVIDENT LIFE and Live Stock Association, 134, 222****LIQUIDATOR AND RECEIVER, 337****LIQUORS—**

- use of intoxicating, materiality of, 244
- meaning of, 304
- condition as to, is just and reasonable, 304

**LIST—**

- official, of registered corporations, 195

**LITERATURE—**

- of insurance corporation, effect of, 11

**LIVE STOCK INSURANCE, 44**

- statutory conditions in, 229
- not affected by this Act, 232

**LOAN COMPANY—**

- deposit of surplus funds with, 212, 215

**LODGE—**

- subordinate, central governing body treated as representing, 22
- twenty-five copies of summary statement sent to each, 212
- one of which is to be posted up, 212

**LOSS—**

- financial, insurance against, 41
- of work, custom, income, etc., etc., 41
- entry after, *see* entry
- duty of assured after, 249
  - (a) to secure property, 249
  - (b) to separate undamaged property, 249
  - (c) to notify insurer of separation, 249

**LUNACY—**

- insurance against, 39

**M.****MACCABEES—**

- Knights of, certificate of, 34

**MANAGED—**

- according to true intent of declaration and Act, 123, 136

**MANAGER—**

- penalty on, for unauthorized insurance, 29
- need not register as agent, 281

H.I.C.A.—31

**MANDAMUS—**

will it lie to compel registry, etc. ? 109, 165  
 proper course is by way of appeal, 160  
 to compel directors to hold meeting, 139  
 as a remedy for illegal expulsion, 304

**MARINE INSURANCE, 44**

re-insurance value in inland, 65  
 ocean, 65  
 inland, under R.S.C. c. 124 : 81

**MARRIAGE INSURANCE, 54**

endowment, when void as in restraint of marriage, 55  
 as a wagering contract, 55

**MASTER AND SERVANT INSURANCE, 52****MASTER-IN-ORDINARY, 331**

powers of, 344, 345

**MATERIAL—**

required on applications for registry, 69  
 terms of contracts, how to be set forth, 227, 231  
 misstatements in application for insurance must be, 232  
 omission, 235  
 what is, fact ? 239

**MATERIALITY—**

a question of fact for jury, 240, 245  
 or for court, if no jury, 245  
 stipulation as to, of no effect, 245

**MATURITY—**

definition of, 64  
 liabilities chargeable prior to maturity are actuarial liabilities, 64

**MAXIMUM—**

meaning of, 34  
*prima facie* payable, 35, 305, 319  
 where assessments do not realize, abatement, 61

**MEDICAL EXAMINATION—**

no part of application, 244

**MEMBER—**

what proceedings against society by, 134  
 right to statement, 208  
 how statement received, 20  
 not bound by audit, 210  
 special audit, how obtainable by, 210, 216  
 liability of, measure of, 287  
 expulsion or suspension of, 297  
 illegal, 304

**MEMBERSHIP IN SOCIETY—**

how far it gives rise to contractual relation, 15  
 necessary to membership in beneficiary department, 15  
 qualifications for, 91  
 withdrawal from, 289  
 forfeiture or suspension of, 290  
 false numbering of certificates of, 225  
 books of society are evidence of, 287  
 fee, 30, 201

**MEMORANDUM—**

of association, effect of, 130

**MENTAL CONDITION—**

insurance against change in, 39

**MERCANTILE VENTURE—**

society for purposes of, not entitled to register, 94

- MILLS—**  
insurance of production at, 42
- MINORS—**  
endowment insurance of, 47  
insurance by, over 15 years is valid, 266  
discharge by, for benefit is valid, 266
- MISAPPLICATION—**  
of assessments, 223
- MISDESCRIPTION—**  
by assured, *see* Misrepresentation  
agent, 237, 238
- MISREPRESENTATION—**  
in application for insurance must be material, 232  
need not be false or fraudulent, 233  
burden of proof of, 234  
distinguished from warranty, 234
- MISSTATEMENT—***see* Misrepresentation
- MISTAKE—**  
registry obtained through, may be revoked 193
- MORAL RISK—**249
- MORTGAGEE POLICIES—**42
- MOTHER—**  
insurance for benefit of, 364
- MUTUAL—**  
benefit insurance, 37  
founded on contract, 37  
insurance, meaning of term in U.S., 59  
distinction of, from "assessment," 60  
fire companies, insurance by, not "assessment," 58, 59  
history of, 120  
returns to be made by, 122  
live stock companies, 58, 59  
history of, 121  
companies, reserve required to be kept by, 61  
subject to Government inspection and audit, 62  
principle of, 94, 120  
position of policy holders in, 94  
shareholders in, 94  
how far mercantile concerns, 96  
distinguished from friendly societies, 119  
stock company, 120  
origin of, 119, 120  
society, included under Society, 11
- MUTUAL RELIEF—**  
Society of Nova Scotia, incorporation of, 102  
Reserve Fund Life Association of New York, 104

## N.

- NAME OF CORPORATION—**  
not conclusive as to its objects, 88, 96, 123  
must not be likely to deceive public as to its identity, 189  
new or changed, no registry under, 189  
unless name authorized, 189
- change of—  
by Order in Council after notice in *Ontario Gazette*, 193  
proceedings and rights not affected by, 191
- right to use of—  
decision of Registrar, 192  
how far decision conclusive, 192  
how far right exclusive, 192



## NEGLECT—

to register, 73

## NEPHEW—

insurable interest of, 260

## NOMINEE—

of insured, payment to, 51, 256

NON-COMMUNICATION—*see* OmissionNON-PAYMENT—*see* Claim

## NOTE—

payment of, at maturity a subject matter of insurance, 41  
*see* Premium

## NOTICE—

of suspension, when sent by Registrar, 27, 193  
when unnecessary, 29, 98, 105  
in *Canada Gazette*, 108how to be served on foreign society, 174  
corporations, 314official, in *Ontario Gazette*, 195, 283  
of loss, when to be given to insurer, 246  
or happening of event, 312waiver of, 312, 313  
to whom given, 313  
delay in giving, 313

of separation, when to be given to insurer, 249

of withdrawal of member, 289

of assessment, 290

form and contents of, 291

statutory requirements of, must be fulfilled, 291

defects of, form in, 292

waiver of, 292

application for re-instatement is not, 293

how served, 300

by advertisement, 300

when time runs, 300

by mail, 300

by registered letter, 300, 301

whither addressed, 301

## O.

## OATH—

Registrar may examine upon, 70, 165  
Inspector " " 111

## OCCUPATION—

is it a material fact? 244

no right of, in insurer after loss, 246

## ODDFELLOWS—

Fraternal Accident Association, 16, 84

## OFFENCES—

- against the Act, by an agent, 29
- effect of conviction and appeal, 29
- neglect to use words "Assessment System," 63

## OFFERING TO UNDERTAKE CONTRACTS, 11, 14, 56, 200

- by suspended company, 135

## OFFICER—

- defined, 68
- owning the company, requires license, 68
- of society, term of office of, 136-7
- man inus to compel meeting to elect, 139
- penalty on unauthorized insurance by, 201
- liable for default of society, 211, 350
- penalty on, refusing to show books, 211
- election of, fraud in, 224

OFFICIAL NOTICES—*see* Notice

## OLD AGE—

- insurance against, 90

## OMISSION—

- in application for insurance, when it avoids the contract, 235
- when it does not, 236

ONTARIO GAZETTE—*see* Notice, Evidence, etc.

- evidence of Registry, 196
- whole copy of, must be produced, 196

## ONTARIO MUTUAL LIFE ASSURANCE COMPANY, 120

ONUS OF PROOF—*see* Burden of Proof

## OPERATED, Society must be, according to declaration, etc., 135

- meaning of, 136

## ORAL CONTRACTS—

- of insurance, 31
- evidence to prove, 31
- construction of, 31
- merger of, 31

ORANGE—*see* Grand Orange Lodge

## ORGANIZER—

- penalty on, offering to undertake without authority, 201

## OTHER INSURANCE—

- meaning and effect of, 244

## OWNERSHIP—

- a material fact, 240

## P.

## PARENT—

- insurable interest of, 265

## PECUNIARY INTEREST—

- beneficiary to have, 256
- not necessary in parent, 265

## PENALTY—

- for not using words "assessment system," 62
- transacting insurance without authority, 71, 199
- misrepresenting effect of registry, 89
- remission of, 202
- application of, 203
- under Ontario Insurance Act, 205, 206
  - Insurance Act of Canada, 205
- for refusal to shew books, 211, 220, 318, 320
  - obstructing audit, 220
  - making false statements of the society's finances, 220
    - untrue entries, 220
  - delivering false copy of rules, 226, 227
  - not printing certain sections on circulars of child insurance, 265
  - rebating and discrimination, 285
  - agent acting without registry, 285
  - receiving application from unlicensed agent, 285
- on receiver for default, 340

## PENSION FUND SOCIETY—

- of Bank of Montreal, 148
- how established, 149
- form of declaration of incorporation, 149
- organization, 150
- powers, 151
- may be registered, when, 152

## PERSON—

- registered and unregistered, 24, 28
- insurance by, 70, 71, 200
- when deemed a corporation, 101, 105, 200

## PHYSICAL CONDITION—

- insurance against change in, 39
- risk, 240

## PHYSICIAN—

- attendance of, may be a material fact, 242

## PLATE-GLASS INSURANCE, 44

- reinstatement in, 45
- salvage in, 45

## PLATFORM—

- accident through jumping from, 270

## POLICY, 30, 277

- conditions in, all to be set out on face or back, 227
  - otherwise of no effect, 227, 230
  - may be indicated by reference, by-laws, etc., if copy delivered, 231
  - as to fire insurance, 227
  - see statutory conditions
- must set out true contract and true consideration, 231

## POLICY-HOLDER—

- right of, to an account, 49
- a creditor, not a *cestui que trust* 49

## POSSESSION—

- no right of, in insurer after loss, 246, 247
- damages against insurer for keeping, 247

**POWER OF ATTORNEY—**

foreign corporation represented by, 68, 172  
contents of, 69, 172  
execution of, 172, 173  
    to be verified, 172, 173  
where filed, 175  
duplicates of, to be filed, 175  
to be filed when change of chief agent, 176

**PRACTICE—**

insurance against loss of, 41

**PREMIUM—**

collection of, effect of, 11  
what constitutes a, 11, 14, 201  
definition, 29  
notes, 29  
restricted sense of, to net annual premium, etc., 30, 252  
may or may not be certain in amount, etc., 35, 38  
contract in consideration of, 51  
Note plan, insurance on, distinguished from assessment insurance, 15,  
    58  
due foreign corporation, may be remitted to it, 93  
    but not collected in Ontario, 93  
calculation of, in certain cases, 251  
insurable interest of person paying, 261  
recoverable where excessive insurance of children, 264  
rebatting of, prohibited, 277-286

**PRINTED FORM—**

of insurance corporation, effect of, 11

**PRINTED—**

included under "written," 32  
controlled by written portions, 32

**PRIVATE PERSON—**

insurance by, 70, 71

**PROCEEDINGS—**

to obtain registry, *see* Application

**PROCESS—**

service of, on foreign corporations, 173  
    after change of agency, 177  
on corporations generally, 178  
substitutional, 178  
*see* Clerk

**PROFITS—**

insurance against loss of, 41, 43

**PROMOTER—**

penalty on, offering to undertake without authority, 201

**PROOF—**

upon, meaning of, 69  
*see* Evidence

**PROPERTY—**

insurance of, 44  
meaning of, 246  
examination of, after loss, 246  
no right of control over, by insurer, 247

**PROPRIETARY COMPANY—**

requires license, 81, 94

rance, 265

tc., if copy

## PROSECUTOR—

who may be under this Act, 203  
share of penalty, 203

## PROVIDENT SOCIETY—

included under "Society," 11

## PROVINCE—

means Province of Ontario, 9  
out of, *see* Foreign  
jurisdiction of, xxiii, 82

## PROVINCIAL—

representative of corporation, 22, 23  
extra, *see* Foreign

## PROVINCIAL PROVIDENT INSTITUTION, 102

## PROXIES—

attempted control of society by means of, 138, 224

## PUBLICATIONS—

of Assessment Co. must bear words  
"assessment system," 62

## Q.

## QUALIFICATION—

for membership in "society," 91

## QUEEN'S PRINTER—

copies, etc., printed by, 196

## QUESTION—

material misstatement in answer to, 235  
none asked, omission to give information does not affect contract, 236

## QUO WARRANTO—

against society acting *ultra vires*, 133

## R.

## RAILROAD—

relief associations, 145-147  
accidents, 271

## REBATING—

prohibited, 278  
to whom, 277  
to what extent of insurance, 278  
*see* Discrimination

## RECEIPT—

endorsed on policy, *prima facie* evidence, 32  
of policy, should be taken from assured, 222

**RECEIVER—**

- treasurer of society becomes interim, 73, 135, 336
- appointment and duty of, lvii, 335
  - where more than one custodian of funds, 336
- to make deposits in bank, 338, 346
  - and get receipt, 339
- interest on deposits by, 339
- application to be confirmed, 339, 343
  - form of, 339
  - hearing of, 343
  - public notice of, 243
  - how to be entitled, 340
- to file receipt and affidavit, 340
  - form and contents of affidavit, 341
  - who may take affidavit, 342
- securities by, 342, 343, 345
- committal of, 349
- trusts company may be appointed as, 342
- books of, to be accessible to Registrar, 346
- accounts to be passed by, 347
- Registrar may take proceedings relative to, 347
- on default of interim, another may be appointed, 348
  - duties of new receiver, 348
- not complying with orders, 348

**REGISTER—**

- Insurance Agents', 282
  - when to be opened, 282
  - entries in, 282

**REGISTERED—**

- meaning of, 24

**REGISTERS—**

- three, under the Act, 69
- Corporation, 73
  - (1) Under Ontario Insurance Act, 73
    - or Insurance Act of Canada, 73
    - known as The Insurance License Register, 73
    - kept by Inspector of Insurance, 73
    - what entries on, 73, 180
    - evidence of contents of, 74
    - entry of, Provincial licenses, 74, 97
    - Dominion licenses, 74, 76, 100
    - renewal of registry on, 74
    - certificate of entry on, 75
  - (2) Friendly Society Register, 76
    - kept by Registrar of Friendly Societies, 76
    - entries on, 76, 180
    - evidence of contents of, 77
    - certificate of registry, 77
    - what societies entitled, 128
    - judgment on appeal from Registrar to be entered on 165

**REGISTRAR—**

- meaning of, 10
- first, is Inspector of Insurance, 10
- duties of, 77, 78, 164
- powers of, 164, 168, 169
- appeal from, 78, 333
- of Friendly Societies, who may be, 164
- evidence before, 165
- salary of, 165
- report of, no warranty of solvency, 187
- seal or signature of, how proved, 196
- certificate of, what it is evidence of, 197

## REGISTRY—

- meaning of, 10
- loss of, 21, 24
- certificate of, what it sets forth, 25, 71
- duration of, 25, 183, 185
- cancellation or suspension of, 21, 26, 27, 29, 184, 193, 315, 316
  - notice of, 193
- an essential before undertaking insurance, lvi, 70
- proof of, onus on corporation, 71
  - by certificate of Registry Officer, 71
- application for, how made, 77
- fact of, does not warrant solvency, 78
- corporations not entitled to, 78
  - (a) companies requiring license, 79
  - (b) companies managing charities, 85
  - (c) companies undertaking other than certain contracts, 90
  - (d) proprietary or J. S. Cos., 94
- of benevolent societies, 128
- interim, 169, 185
- extension of time for, 168, 169
- renewal of, 183, 185
- does not authorize corporation to undertake outside of Ontario, 188
- penalty on misrepresenting the effect of, 189
- obtained by fraud, etc., may be revoked, 193
- duty of determining right to, is on Inspector of Insurance, 109, 233
- proof of, by official lists in *Ontario Gazette*, 195, 196
- as agent, material on which granted, 282
- recommendation required, 282
- certificate of, 282
  - contents of, 283
- fees for, 283
- official list of those who have obtained, 283
  - where published, 283, 324
- official notice of revocation of, 283
- suspended where agent convicted of offence, 285
  - no revivor for three years, 29, 108, 285
- notice of suspension of, 285
- reciprocity with other legislatures as to, 286

## REGISTRY OFFICER—

- meaning of, 10
- when, includes deputy or assistant, 199

RE-INSTATEMENT—(*Property*).

- nature of right to, a statutory one, 44
- liability for neglect in, 45
- measure of damages, 45
- in plate glass insurance, 45

RE-INSTATEMENT—(*Membership*).

- as member, 301
- application for, is not a waiver of notice of assessment, 293
- by-laws generally provide for, 301
- construction of such by-laws, 301
- conditions of, 302

## RE-INSURANCE—

- included under Insurance, 35
- definition and explanation of, 38
- value, the basis of reserve, 65
  - how calculated, 65
- none against members of prohibited society, 93

## REJECTION—

- of applicant by another office, is material, 243
  - evidence of, 244

- RELATIONSHIP—**  
     of assured, not material, 244
- REMISSION OF PENALTIES—**202
- REMUNERATION—**  
     officers entitled to what? 133
- RENEWAL—**  
     of registry, 74, 78, 183  
     of Dominion licensee, 183, 184
- RENT—**  
     insurance against the loss of, 41  
     by tenants, 43
- REPEAL CLAUSES, 204, 208, 277, 355**  
     summary of, 357
- REPORT—**  
     of Inspector, on company, (insolvent), 99  
     registrar no warranty of solvency, 187  
     superintendent on company, (insolvent), 107
- REPRESENTATIVE—**  
     in Province of corporation, 22, 23
- REPRESENTATIVES—**  
     insurance may be payable to, 51, 256
- REPUDIATION—**  
     of contracts, special audit when, 216
- REQUISITION—**  
     for audit, 217  
     security for costs on, 219
- RESERVE—**  
     mutual companies required to maintain, 61  
     amount of reserve required, 61  
     what reserve may consist of, 61  
     how calculated, 65  
     amount of reserve of friendly society a matter of internal regulation, 66  
     officers of society may use, to pay losses, 67  
     or may make assessment, 67  
     to be deemed a trust for members in jurisdiction, 179
- REVENUE—**  
     insurance against loss of, 41
- REVIVOR—**  
     of registry of agent, 29  
     license, 108  
     registry of corporation, 108, 316
- REVOCATION—**  
     of license, 25, 98, 99, 105, 135, 327  
     registry, 21, 25, 98, 105, 135, 193  
     corporate powers, 118, 134, 222  
     cancels registry, 327
- RISK—**  
     moral and physical, 240
- RULES—**  
     of insurance society, copy of, may be demanded on tender of twenty  
     five cents, 18, 226  
     effect of falsified, 18, 226  
     definition of, 68  
     certified copies of, 77  
     new, how far existing contracts affected by, 168  
     changes in, filing power of attorney after, 176



## S.

## SAFETY—

a subject of insurance, 81

## SALARIES—

of officers of society, rules as to, 139

## SALE of GOODS—

insurance of profits on, 43

## SALVAGE—

no right of, in insurer, 246  
duty on assured of, 249

## “SANE or INSANE,” 272

## SANITATION—

insurance against loss from, 44

SEAL—*see* “Contracts under Seal.”

of registry officer, how proved, 196

## SECRETARY of SOCIETY—

included under “Officer,” 68

## SECURITY for COSTS—

on appeal from conviction under this Act, 203  
from decision of Registrar, 333  
on requisition for audit, 219

## SEMI-TONTINE—

included under “Insurance,” 45  
nature of, 48  
lapse of, policies, 48  
separate accounts of, 49

## SEPARATE FUNDS, etc.—

to be kept by insurance branch, 15, 17  
what are deemed, 17  
investment of, 17, 18  
accounts of tontine and other policies, 49

## SEPTENNIAL BENEVOLENT SOCIETY, 134, 223

## SERVANT—

insurable interest of, 259

## SERVICE—

of process on foreign corporations, 173  
after change of chief agency, 177  
on corporations generally, 178, 314  
substitutional, by publication, 178

## SHARES—

insurance of, 44

## SHORT—

Title of Act, 9

## SICKNESS—

insurance against, included in "Insurance," 39  
 included in "Life Insurance," 256  
 definition of, 39  
 includes lunacy, 39  
 how far permissible to friendly society, 90

## SIGN—

effect of insurance corporation setting up, 11

## SIGNATURE—

of Registry Officer, how proved, 196

## SINKING FUND—

policies providing, 44

## SISTER—

insurable interest of, 259

## SON—

insurable interest of adult, 260

## SON-IN-LAW—

insurable interest of, 260

## STEPSON—

insurable interest of, 260

## SOCIETY—

meaning of, 11  
 benefits, how far affected by insurance legislation, 13  
*see* "Friendly Society."

## SOLICITING—

insurance is "offering to undertake," 11  
 when company implicated by, 15

## SOLVABILITY—

of debtor, a subject matter of insurance, 41

## SOLVENCY—

actuarial and *prima facie*, 122  
 not warranted by registry, 187

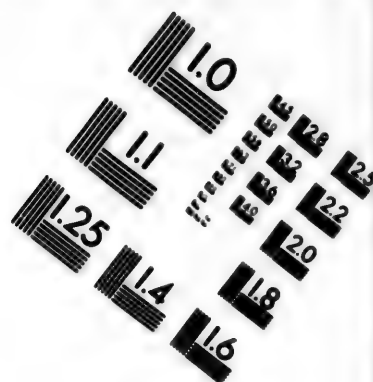
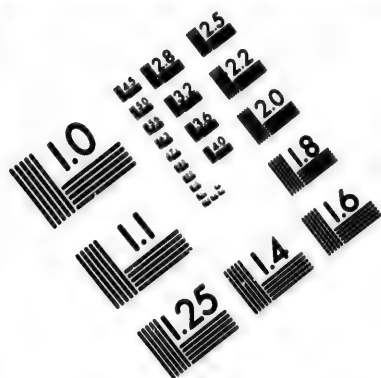
## SOLVENT—

license withdrawn from company not actuarially, 62  
 definition of, 66, 163

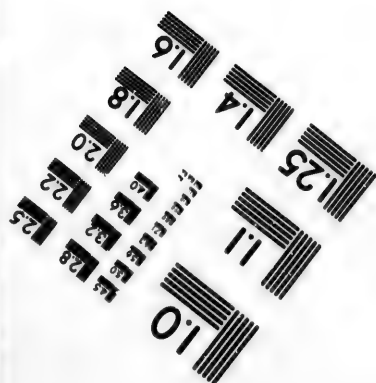
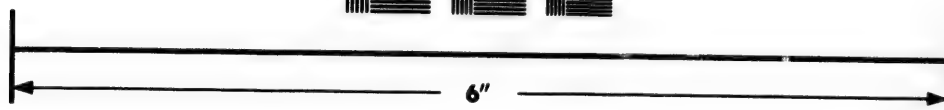
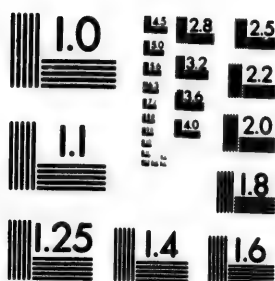
## STATEMENT—

annual, of insurance corporation, 19, 172, 208, 321  
 of friendly society may include actuarial statement, 166  
 before renewal, 171, 321  
 not a government warranty of solvency, though printed in  
     Registrar's report, 187  
 right of member to, 208  
     how served on member, 210, 212  
 financial  
     to be filed with application for registry, 169  
     contents of, 170, 322  
     by whom signed, 169, 170  
         must shew society solvent, 170  
     false or erroneous, 171  
     duplicate to be filed, 171  
     as evidence for claimant against society, 171  
     must state all changes in the constitution, 176





# **IMAGE EVALUATION TEST TARGET (MT-3)**



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## STATUTES—

- 11 Geo. II. c. 37 (Imp.), li.  
 19 Geo. II. c. 37 (Imp.), xxxvii, 38  
 14 Geo. III. c. 48 (Imp.), xxxviii, xl, xli,  
 li, liii, 13, 256, 261, 264  
 c. 78 (Imp.), 44  
 28 Geo. III. c. 56, liii  
 33 Geo. III. c. 54 (Imp.), 112  
 6 Wm. IV. c. 18 (Ont.), 121  
 13 & 14 Vic. c. 32 (Prov. of Can.), 112  
 19 & 20 Vic. c. 79 (Imp.), 196  
 21 & 22 Vic. c. 101 (Imp.), xli  
 22 Vic. c. 46 (Ont.), 121  
 25 & 26 Vic. c. 89 (Imp.) (Companies  
 Act, 1862), 94, 355  
 29 Vic. c. 17 (Ont.), 277  
 30 & 31 Vic. c. 3 (Imp.), *see* British N.  
 A. Act  
 31 Vic. c. 53 (Ont.), xxiv  
 32 Vic. c. 17 (Ont.), 120  
 33 Vic. c. 21 (Ont.), 277  
 34 Vic. c. 32 (Ont.), 113  
 35 Vic. c. 16 (Ont.), 277  
 36 Vic. c. 19 (Ont.), 277  
 c. 44 (Ont.), lviii, 115, 122  
 36 & 37 Vic. c. 66 (Imp.), s. 3, 196  
 9, 226, 227  
 10, 269  
 37 Vic. c. 34 (Ont.), l, 114  
 c. 45 (Dom.) 17  
 c. 50 (Dom.), 216  
 c. 65 (Dom.), 145  
 38 Vic. c. 65 (Ont.), xxv  
 38 & 39 Vic. c. 60 (Imp.) Friendly Soci-  
 eties Act, 1875, xli, 56, 200  
 s. 4, 23, 24, 67, 68  
 s. 8, 11, 30, 261  
 s. 11, 190, 333, 335  
 s. 12, 193, 194  
 s. 13, 226, 227  
 s. 14, 162, 209, 217,  
 321, 351  
 s. 15, 33  
 s. 16, 162, 163  
 s. 21, 162, 163  
 s. 30, 209  
 s. 28, xlv  
 s. 32, 220, 221  
 s. 35, 217, 219  
 s. 39, 196, 198, 199  
 39 Vic. c. 23 (Ont.), lviii, 122, 124  
 c. 24 (Ont.), xxv, 228  
 39 & 40 Vic. c. 45 (Imp.), 199, 333, 335  
 c. 55 (Imp.), 33  
 40 Vic. c. 7 (Ont.), 277  
 c. 49 (Dom.), 216  
 41 Vic. c. 8 (Ont.), 116  
 c. 25 (Dom.), 145  
 42 Vic. c. 25 (Ont.), 122  
 c. 49 (Dom.), 216  
 43 Vic. c. 20 (Ont.), 207  
 c. 49 (Dom.), 147

## STATUTES—Continued

- 44 Vic. c. 15 (Ont.), 277  
 c. 20 (Ont.), 207, 223  
 45 Vic. c. 20 (Ont.), 30, 228  
 46 Vic. c. 15 (Ont.), lviii  
 46 & 47 Vic. c. 47 (Imp.), 34  
 47 Vic. c. 20 (Ont.), 126, 277, 361  
 c. 27 (Ont.), 116  
 c. 40 (Dom.), 216  
 48 Vic. c. 28 (Ont.), 277, 361  
 48 & 49 Vic. c. 13 (Dom.), 148  
 c. 23 (Dom.), 147  
 49 Vic. c. 45, 311  
 c. 56 (Dom.), 89, 155  
 50 Vic. c. 7 (Ont.), 364, 365  
 c. 26 (Ont.), 44, 119, 125,  
 384, 386  
 50 & 51 Vic. c. 21 (Dom.), 148  
 c. 55 (Dom.), 148  
 c. 56 (Imp.), 34  
 51 Vic. c. 5 (Ont.), 202  
 c. 22 (Ont.), 117, 118, 126,  
 127, 274, 276,  
 277, 361, 364  
 51 Vic. c. 25 (Ont.), 367  
 c. 26 (Ont.), 117, 190, 191  
 c. 28 (Dom.), 83  
 52 Vic. c. 31 (Ont.), 379  
 c. 32 (Ont.), xxxvi, liv, 229,  
 233, 250, 252,  
 255, 367, 373  
 c. 32 (Dom.), 328  
 c. 33 (Ont.), liii, 59, 97, 121  
 c. 104 (Dom.), 63, 141, 143,  
 229, 232  
 53 Vic. c. 34 (Ont.), 220  
 c. 37 (Ont.), 345  
 c. 39 (Ont.), 277  
 s. 1, 361, 363  
 s. 3, lii, 363  
 s. 4, xlii, 363  
 s. 5, 364  
 s. 6, 364  
 s. 7, 372  
 s. 8, 371  
 s. 9, 88, 89, 117, 128,  
 222, 327, 356  
 s. 10, lviii, 118, 134,  
 327  
 s. 11, 223  
 s. 13, 118, 126  
 c. 44 (Ont.), 60, 382  
 c. 105 (Dom.), 63, 143  
 54 Vic. c. 19 (Ont.), 212, 368  
 c. 37 (Ont.), 380  
 c. 38 (Ont.), 215  
 c. 59 (Ont.), 119  
 55 Vic. c. 39 (Ont.), Insurance  
 Corporations Act, 1892,  
 xxxiv  
 s. 1, 9  
 s. 2, 227, 229, 250, 311

## STATUTES—Continued.

ued

t.), 277  
 t.), 207, 223  
 t.), 30, 228  
 t.), lviii  
 p.), 34  
 t.), 126, 277, 361  
 t.), 116  
 om.), 216  
 t.), 277, 361  
 om.), 148  
 om.), 147  
 11  
 om.), 89, 155  
 t.), 364, 365  
 t.), 44, 119, 125,  
 384, 386  
 om.), 148  
 om.), 148  
 p.), 34  
 t.), 202  
 t.), 117, 118, 126,  
 127, 274, 276,  
 277, 361, 364  
 t.), 367  
 t.), 117, 190, 191  
 om.), 83  
 t.), 379  
 t.), xxxvi, liv, 229,  
 233, 250, 252,  
 255, 367, 373  
 om.), 328  
 t.), liii, 59, 97, 121  
 om.), 63, 141, 143,  
 229, 232  
 t.), 220  
 t.), 345  
 t.), 277  
 361, 363  
 lii, 363  
 xlii, 363  
 364  
 364  
 372  
 371  
 88, 89, 117, 128,  
 222, 327, 356  
 lviii, 118, 134,  
 327  
 223  
 118, 126  
 t.), 60, 382  
 om.), 63, 143  
 t.), 212, 368  
 t.), 380  
 t.), 215  
 t.), 119  
 Ont.), Insurance  
 ations Act, 1892,  
 xxxiv  
 9  
 227, 229, 250, 311

55 Vic. c. 39 s. 2 (1), 9  
 (2), 9  
 (3), 10  
 (4), 11, 14-23, 24,  
 25, 56, 57,  
 85, 93, 146,  
 195, 201,  
 202, 208,  
 210  
 (5), 17, 23  
 (6), 24, 181, 183,  
 186, 197,  
 316, 322,  
 (7), 14, 29  
 (8), li, 30, 33  
 (9), 32, 229  
 (10), 33, 37, 58  
 (11), 34, 305, 319  
 (12), li, 13, 25, 30,  
 33, 35-55, 5;  
 70, 92, 155,  
 200, 202, 256,  
 277, 278, 281  
 (13), 17, 24, 56, 71  
 322  
 (14), 30, 58-64,  
 143, 265  
 (15), 64, 171, 305,  
 311, 365  
 (16), 64-66, 159,  
 164, 170, 187  
 217  
 (17), 67, 95  
 (18), 68, 95  
 (19), 68  
 (20), 68, 172, 181,  
 331  
 (21), 69, 174, 181,  
 281  
 (22), 69, 100, 136,  
 166, 351  
 (23), 69, 136, 163,  
 164, 186  
 s. 3, xxxix, 25, 70, 200,  
 280  
 s. 4 73  
 (1) 10, 24, 73  
 (2) lxiii, 10, 24,  
 37, 76, 80,  
 352  
 (A) 13, 79  
 (B) 13, 85, 89,  
 140, 152  
 (C) 13, 39, 46,  
 47, 73, 90,  
 127, 129,  
 161  
 (D) 12, 13, 57,  
 68, 81, 93,  
 94, 97, 129  
 136, 161  
 (3), 97

## STATUTES—Continued.

55 Vic. c. 3), s. 5 169, 185  
 (1), 26, 74, 97  
 (2), 26, 98, 194,  
 s. 6, xxxvi, 169, 183,  
 184, 207  
 (1), 74, 100, 104  
 (2), 56, 58, 61,  
 62, 76, 101,  
 200  
 (3), 165, 184, 194  
 353  
 s. 7 (1), 10, 109  
 (2), 70, 111, 332  
 (3), 111  
 s. 8 (1), 13, 81, 128,  
 172, 321,  
 352  
 (2), 13, 83, 95,  
 135, 136, 161  
 s. 9 (1), 13, 85, 95,  
 128, 141, 158,  
 321  
 (2), 13, 24, 145,  
 156, 354  
 (3), 13, 152, 158,  
 354  
 (4), 13, 24, 89,  
 154, 158,  
 354  
 s. 10 (1), 56, 95, 158,  
 172, 200,  
 321  
 (2), 66, 159, 163  
 s. 11 (1), 10, 109, 164  
 (2), 70, 111, 164,  
 165, 332  
 (3), 165  
 s. 12 (1), 69, 77, 97,  
 100, 135,  
 156, 145,  
 152, 156,  
 160, 164,  
 165, 177,  
 352, 354  
 (2), 168, 186, 352,  
 354  
 s. 13 77, 100, 145  
 152, 156,  
 169, 175,  
 189  
 s. 14 (1) 10, 69, 159,  
 172, 353,  
 354  
 (2) 69, 160, 173,  
 176, 332  
 (3) 175  
 s. 15 156, 160, 174,  
 175, 176  
 s. 16 167, 173, 174,  
 176, 353,  
 354

## STATUTES—Continued.

- 55 Vic. c. 39, s. 17 (1), xlv, 174, 176,  
177  
(2) 178  
(3) 18, 23, 67, 179  
s. 18 (1) 10, 74, 76,  
133, 180  
(2) 25, 77, 182,  
193  
s. 19 (1) 26, 100, 183,  
185, 331  
(2) 26, 105, 184  
s. 20 26, 181, 185,  
323  
s. 21 80, 169, 181,  
185, 186,  
352, 353  
s. 23 (1) 62, 66, 104,  
187, 322,  
324  
(2) 188  
(3) 189  
s. 23 181, 189  
s. 24 (1) 191, 352  
(2) 193  
(3) 193  
s. 25 (1) 27, 66, 135,  
171, 193  
(2) 135, 194  
s. 26 (1) 11, 182, 195,  
283, 284,  
350  
(2) 181, 186, 284  
(3) 196, 284  
(4) 165, 196, 284  
(5) 25, 71, 77,  
133, 165, 182  
197, 204, 284  
(6) 74, 182, 197  
(7) 74, 77, 165,  
182, 198, 284  
(8) 11, 199  
s. 27 (1) xxxvi, 14,  
25, 63, 71,  
135, 167, 183  
189, 195, 196  
199, 205, 226  
265, 285, 322  
(2) 14, 201, 205,  
265, 286  
(3) 203, 286, 350  
(4) 203, 286, 350  
(5) 71, 204, 286,  
350  
(6) 203, 204, 286,  
350  
(7) 201, 204  
s. 28 (1) 18, 207  
(2) 208  
s. 29 (1) 18, 20, 172,  
175, 179, 180  
185, 208, 221,  
321, 324

## STATUTES—Continued.

- 55 Vic. c. 39, s. 29 (2), 17, 67, 212  
s. 30 (1), 21, 27, 211,  
216, 318  
(2), 21, 218  
(3), 21, 218  
(4), 19, 21, 68,  
219  
(5), 19, 20, 21,  
211, 217,  
220, 318,  
320, 346  
(6), 20, 21, 211,  
221, 320  
s. 31 (1), 27, 170, 218,  
221  
(2), 27, 218, 221  
(3), 221  
s. 32 (1), li, 18, 226  
(2), 18, 226  
s. 33 (1), liv, 227, 372  
(2), 232, 372  
(3), 245  
(4), 246, 376, 378  
383  
s. 34 (1), liv, 30, 250  
(2), 30, 252  
(3), 255  
(4), 255  
(5), 255  
s. 35 (1), xxxviii, xlviii  
liv, 48, 256  
(2), 58, 255  
(3), 263  
(4), xxxiv, li,  
265  
(5) 265,  
(6), 263, 265  
(7), li, 266  
s. 36, lv, 40, 267, 304  
s. 37 (1), 90, 92, 262,  
274  
(2), 277, 361  
s. 38 (1), 10, 28, 277  
352  
(2), 278  
(3), 280  
(4), 23, 281, 333  
(5), 28, 29, 282  
(6), 29, 282  
(7), 283  
(8), 283  
(9), 283  
(10), 284  
(11), 29, 285, 333  
(12), 281, 285  
(13), 279, 281, 285  
(14), 278, 280, 287  
s. 39 (1), li, 60, 287  
(2), 60, 289  
s. 40 (1), li, 290  
(2), 303  
s. 41 (1), 35, 61, 171,  
305, 319



## STATUTES—Continued.

ued.  
 (2), 17, 67, 212  
 (1), 21, 27, 211,  
 216, 318  
 (2), 21, 218  
 (3), 21, 218  
 (4), 19, 21, 68,  
 219  
 (5), 19, 20, 21,  
 211, 217,  
 220, 318,  
 320, 346  
 (6), 20, 21, 211,  
 221, 320  
 (1), 27, 170, 218,  
 221  
 (2), 27, 218, 221  
 (3), 221  
 (1), li, 18, 226  
 (2), 18, 226  
 (1), liv, 227, 372  
 (2), 232, 372  
 (3), 245  
 (4), 246, 376, 378  
 383  
 (1), liv, 30, 250  
 (2), 30, 252  
 (3), 255  
 (4), 255  
 (5), 255  
 (1), xxxviii, xlviii  
 liv, 48, 256  
 (2), 58, 253  
 (3), 263  
 (4), xxxix, lii,  
 263  
 (5), 263,  
 (6), 263, 265  
 (7), li, 266  
 iv, 40, 267, 304  
 (1), 90, 92, 262,  
 274  
 (2), 277, 361  
 (1), 10, 28, 277  
 352  
 (2), 278  
 (3), 280  
 (4), 23, 281, 333  
 (5), 28, 29, 282  
 (6), 29, 282  
 (7), 283  
 (8), 283  
 (9), 283  
 (10), 284  
 (1), 29, 285, 333  
 (2), 281, 285  
 (3), 279, 281, 285  
 (4), 278, 280, 287  
 (1), li, 60, 287  
 (2), 60, 289  
 (1), li, 290  
 (2), 303  
 (1), 35, 61, 171,  
 305, 319

55 Vic. c. 39 (2), 61, 104, 308,  
 311  
 s. 42 217, 225, 308  
 s. 43 289, 314  
 s. 44 (1), 26, 27, 66,  
 99, 108, 158  
 193, 225,  
 315, 353,  
 354  
 (2), xxxv, 26, 316  
 (3), 226, 316  
 (4), 317  
 s. 45 220, 221, 317,  
 340  
 s. 46 (1), 19, 35, 171  
 308, 318,  
 319  
 (2), 19, 35, 308,  
 319  
 s. 47 (1), 19, 26, 167,  
 172, 175,  
 177, 185,  
 321  
 (2), 111, 320, 324  
 342  
 (3), 324  
 s. 48 324  
 s. 49 (1), 28, 99, 108,  
 184, 194,  
 325, 336  
 (2), 28, 194, 329,  
 336  
 (3), 111, 164, 330,  
 (4), 331  
 (5), 331, 340  
 s. 50 (1), 162, 164, 194  
 332, 337  
 (2), 332  
 (3), 332  
 (4), 333  
 s. 51 (1), 111, 135, 162,  
 164, 165,  
 171, 190,  
 221, 226,  
 317  
 (2), 163, 335  
 (3), 165, 335  
 (4), 335  
 s. 52 (1), 335, 337  
 (2), 336  
 s. 53 (1), 73, 100, 135,  
 164, 194,  
 223, 317,  
 335, 336,  
 348, 350  
 (2), 338  
 (3), 339  
 (4), 339  
 s. 54 (1), 164, 335, 339,  
 348, 350  
 (2), 340  
 (3), 340

## STATUTES—Continued.

55 Vic. c. 39, s. 54 (4), 342  
 (5), 342  
 (6), 342  
 (7), 343  
 s. 55 (1), 335, 343  
 (2), 343  
 s. 56 (1), 73, 335, 344  
 (2), 344  
 (3), 345  
 (4), 345  
 (5), 346  
 (6), 343, 346  
 (7), 346  
 (8), 346  
 (9), 347  
 (10), 343, 347  
 s. 57 (1), 335, 348  
 (2), 348  
 s. 58 (1), 335, 348  
 (2), 342, 349  
 s. 59 (1), 335, 348, 350  
 (2), 350  
 (3), 350  
 s. 60 71, 201, 211,  
 279, 285, 350  
 s. 61 351  
 s. 62 Div. I, 69, 136,  
 144, 156,  
 162, 167,  
 169, 174,  
 183, 186,  
 283, 332,  
 351  
 Div. II, 74, 100,  
 105, 152,  
 154, 283, 353  
 Div. III, 355  
 Div. IV, 182, 198, 355  
 s. 63. (1), 103, 129, 327, 355  
 (2), 90, 91, 276, 357  
 C. S. U. C. c. 52 115  
 C. S. C. c. 71 113  
 British N. A. Act  
 s. 92, (15) xxiii, 202  
 R. S. C. c. 114, 54  
 c. 119, 190, 220, 326, 356  
 c. 124, xxxiv, 25, 26, 56, 70,  
 79, 141, 184, 185  
 200  
 s. 2 69, 76  
 3 83  
 4 81  
 5 328  
 8 105, 328  
 9 & 10 65, 106, 328,  
 12 172  
 14 176  
 18 108, 195  
 21 328  
 22 xxxvi, 64, 143, 201,  
 203, 205  
 23 204

## STATUTES—Continued.

- R.S.C. c. 114, s. 24 326, 356  
 25 66, 197, 108, 328  
 27 xxxv, 230  
 28 xxxv, 233  
 29 108  
 30 & 31 108  
 33 66  
 36 39, 58, 61, 82, 101  
 37 61, 62, 101, 103  
 38 60, 61, 62, 76, 101,  
 103, 104, 105, 187,  
 224, 277, 328  
 39 xxxiv, 58, 61, 62,  
 76, 101, 104, 105,  
 187, 189, 224, 277,  
 308, 328  
 41 63  
 42 63  
 43 16, 64, 83, 84, 143,  
 156  
 45 46, 108, 315, 328  
 46 316  
 47 38  
 49 52, 84  
 c. 129, lvii, 108, 315, 328,  
 335  
 c. 131, 152, 153, 177,  
 190, 209,  
 220, 226, 227, 321  
 R.S.O., 1877, c. 160, lviii  
 c. 161, lviii, 116  
 c. 164, 213  
 c. 167, 102, 128, 322  
 s. 11 116  
 19 116  
 R.S.O., 1887, c. 1, s. 6, 9  
 s. 8 (20), 204  
 (22), 199  
 (24), 336  
 (37), 196  
 (40), 116  
 (44), 206  
 c. 44,  
 s. 23 lvii  
 s. 35 lviii  
 s. 53 340  
 s. 105 335  
 c. 51, 1  
 c. 66, 204  
 c. 61, 196, 198  
 c. 80, 381  
 c. 83, 381  
 c. 90, 202  
 c. 9, 1  
 c. 110, 180, 214  
 c. 116, 25, 70, 71  
 c. 136, liii, 88, 90, 91, 117,  
 118, 126, 274,  
 275, 277  
 (See Appendix A.)  
 c. 141, 147  
 c. 142, 1, 204

## STATUTES—Continued.

- R.S.O. 1887, c. 148, 204  
 c. 156, 54  
 c. 157, 190, 212, 326, 356  
 c. 167, 30, 78, 79, 80, 88,  
 96, 116, 118, 122  
 s. 2 14, 32, 54, 70, 79,  
 125, 239  
 3 70, 80, 125, 204,  
 229  
 5 355  
 7 100, 326, 356  
 17 228  
 18 190  
 20 193  
 22 193  
 23 193  
 30 91  
 33 76  
 40 61  
 44 65, 98, 327  
 46 60, 98, 327  
 48 315  
 53 172  
 55 70, 80, 201, 204  
 56 118, 204  
 57 74, 97, 185, 327  
 61 194  
 62 195  
 72 355  
 81 355  
 92 38  
 100 208, 217  
 103 321, 323  
 104 321, 327  
 109 61, 65  
 110 31  
 114 liii, 31, 45, 227,  
 232, 239, 246,  
 249, 311, 314,  
 317 (See Ap-  
 pendix A.)  
 115 228, 273  
 117 273, 304  
 118 380  
 120 380  
 122 29, 59  
 124 60  
 125 60  
 130 212, 356  
 132 382  
 137 367  
 138 10  
 140 62, 199, 318  
 141 318  
 142 194, 220  
 143 62, 99, 327  
 146 217, 218  
 150 198  
 151 100, 328  
 133 lviii  
 213  
 c. 169,  
 s. 35 53

## STATUTES—Continued.

R. S. O. 1887, c. 169, s. 56,	215	Consol. Rules	120, 344
c. 172,	87, 88, 89, 116, 127,		123, 347
	128, 158, 322		125, 332
s. 1	102, 117, 327, 356		146, 333, 339
2	137		147, 339
4	137		163, 338
5	102, 137, 356		164, 338
6	137		165, 331
10	1, 266		166, 339
11	91, 123, 275		191, 345
14	137		253, 179
17	356		267, 178
19	89, 193		269, 178
c. 183,	328, 336		475, 334
c. 186,	214		479, 348
c. 217,	381	N. Y. Laws, 1877, c. 321,	1245, 334
Consol. Rules	116, 344, 347,	1883, c. 175, 17	
	119, 344	1887, c. 285, 17	

## STATUTORY CONDITIONS

to be part of every contract, 372

extension of principle, 373

(1) as to misrepresentation or omission, 374

materiality of, 374

(2) policy to be deemed as applied for unless variance pointed out, 375

(3) change material to risk to be notified to Co., 375

(4) change of property, 376

(5) partial damage, salvage, 376

no abandonment, 376

(6) money, securities, not insured, 376

(7) plate, glass, etc., not insured, 376

(8) effect of further or prior insurance, 376

(9) Assent to other insurance, 376

(10) excepted risks, 377

(11) explosion and lightning, 377

(12) proof of loss by assured, 377

(13) directions in making claim, 377

insurers right of entry after loss, 378

allowance for costs occasioned by plaintiff's default, 376

(14) proof by agent, 380

(15) fraud in claim, 380

investigation of claims, 380

coroner's inquest, 381

(16) arbitration, 382

(17) loss when payable, 382

return of premium note, 382

(18) re-instatement, 383

(19) insurance terminable on notice, 383

(20) waiver, 384

(21) who deemed agents, 384

(22) actions to be brought within one year, 384

(23) what constitutes written notice

variations in, how indicated, 384

not binding unless clearly indicated, 385

policy containing other than, 385

when due proof according to, not given, through accident, 385

appeal from decisions on, 386

in fire policies, 227, 232

descriptions of property under, 240

history of, 228

variations in, 228

**STATUTORY CONDITIONS—**

- in life insurance, 228
- in live stock insurance, 229, 232
- in all contracts of insurance, 227, 229

**STEAM—**

- boiler insurance, 44

**STENOGRAPHER—**

- may be employed to report proceedings, 333

**STIPULATIONS—**

- must be set forth on policy, 227, 230

**SUB-AGENT—see Agent****SUBSTITUTIONAL—**

- service on foreign corporation, 178

**SUE—**

- member appointed to, and be sued is "officer

**SUICIDE—272**

- sane, 272

**SUMMARY—**

- of provisions of Act, 1

**SUNSTROKE—**

- no accident, 270

**SUPREME COURT—**

- of I. O. F., *see* Independent

**SURPLUS—**

- in endowment insurance, 42
- equitable distribution of, 49
- distribution of, 73
- see* Investment

**SURVEY—**

- insurer and assured may make joint, of loss, 250
- effect of, 250

**SURVIVORSHIP—**

- principles, insurance on, 45, 50

**SUSPENSION—**

- of license, 25, 26, 98, 99, 105, 135, 184
- registry, 21, 25, 98, 105, 135, 184, 193, 315
- notice of, 193
- for obstruction of auditor, 221
- by certain events *ipso facto*, 329
- of corporate powers, 222
- of members, 297
- of subordinate lodge, 298

**T.****TABLE—**

- Hm.,  $4\frac{1}{2}$  per cent., 253

**TELEPHONE—**

- contracts by, 30

**TEMPERATE—**

- meaning of, 244

**TENDER—**

- of assessment before withdrawal, 289
- forfeiture, 291, 296

- TENDER**  
 when unnecessary, 296  
 to whom made, 296  
 when to be made, 297  
 by suspended member, 297  
 by expelled member pending appeal, 297
- TERM** of license, 74, 75  
 registry, 74, 75  
 office in friendly society, 136
- THEFT**—  
 insurance against loss from, 44
- TIME**—  
 for laying information, 204  
*see* Date
- TITLE**—  
 danger of loss from invalidity of, insured against, 41  
 of assured not material, if he has an interest, 249
- TONTINE**  
 included under Insurance, 45  
 policies, nature of, 48  
 dividend period, 48  
     no surrender value during, 48  
 surplus and accounts, 49
- TRADE**  
 not included among objects of benevolent society, 115, 116  
 union insurance benefit societies, 152  
     entitled to registry, 152  
 definition of, 152  
 organization of, 152  
 not a benevolent society, 152  
 registered rules of, 153  
 contracts of insurance with, how enforced, 153
- TRADING SOCIETY**—  
 not entitled to register, 94
- TREASURER**—  
 of society, included under officer, 68  
 is interim receiver, when ? 73
- TRUST**—  
 for beneficiary, insurance money payable in,  
 reserve fund regarded as a, 179  
 funds, insurance of, 43
- TRUSTEE**—  
 of society, included under "officer," 68  
 has insurable interest, 258
- U.
- ULTRA VIRES**—130, 131  
 who may set up plea of, 131, 13  
 under this Act, 132, 133
- UNAUTHORIZED**—  
 insurance, penalties on, 199
- UNCLE**—  
 insurable interest of, 260
- UNDERTAKING**—  
 insurance, what constitutes 1  
 effect of, 11, 13, 56

## UNDERTAKING

penalty on, without authority, xxxvi, 199  
*see* offering to undertake

UNDISPUTED—*see* "Claim."

## "UNJUST and UNREASONABLE"—273

## UNNECESSARY DANGER—

exposure to, 40

## UNREGISTERED—

meaning of, 24  
corporation, insurance by, 70, 71  
foreign, resident in Ontario may send premium to, 72  
penalty on insurance by, 199

## "UPON PROOF"—

definition of, 69, 136

## V.

## VALUABLE CONSIDERATION—

a test of an insurance corporation, 11

## VARIATION—

of obligation under accident policy must be just and reasonable, 267,  
273  
statutory conditions, 273

## VOLUNTARY—

exposure to unnecessary danger, 40, 267  
what constitutes, 271  
a question for jury, 271  
burden of proof of, 272

## VOUCHERS—

separate, to be kept by insurance branch of society, 15  
refusal to exhibit, 20

## W.

## WAGERING POLICIES—256, 257

14 Geo. III. c. 48, effect of, on, 257

## WAGES—

insurance against loss of, 41  
*see* "Chomage."

## WAIVER—

of questions by issuing policy, 236  
of notice of assessment, 292  
of loss, etc., 313  
forfeiture, 294  
proof of loss, 313, 314

**WARRANTY**

distinguished from misrepresentation in applications for insurance, 234

**WIDOWER**

statement that applicant is, materiality of, 245

**WIFE**—insurable interest of, 260

**WINDING UP—**

effect on registry, 28, 328  
unregistered society, ix, 73

**WINDING UP—**

prohibited society, 93  
after cancellation of license, 108  
of Ontario licensees, lvii, 335

**WITHDRAWAL**

of members from society, 289  
notice of, 289  
when complete, 289  
a bar to action, 289

**WIVES and CHILDREN**

insurance for benefit of, 274

Act relating to, applies to friendly societies, 274  
controls by laws of society, 275, 276  
what Act includes, 361

insurance effected before 18th Apl., 1865, might be declared in favor of, 361

persons may insure for benefit of, 362

how insurance effected,  
policy may be declared for benefit of, 362

form of declaration, 362

where policy before marriage, 363

appointment of benefit, 364

where no appointment made, 365

and beneficiary die, 365

and persons entitled dies, 366

moneys not liable to creditors, 366

appointment of trustees, 366

where no trustees, payment to executors  
and guardians, 367

payment where beneficiary out of Ontario,  
367

investment of shares of infants, 368

security by guardian, 369

payment of infants' shares into Court, 369

direction by Court as to payment, 369

power to surrender policy, 370

to borrow on policy, 369

insured may direct application of bonuses,  
370

consolidation of actions under, 370

declaration of appointment must be notified  
to Co., 371

fraud in payment of premiums, 371

other modes of assignment than by declar-  
ation, 371

surrender of policy by interested persons,  
371

who considered interested, 372

**WORK—**

insurance against loss of, 41

**WORKMEN—**

collective policies against accident, 52  
organizations of, when exempt from Act, 154

**WOUND—**

meaning of, 242

**WRITTEN—**

meaning of, 32  
words control printed ones, 32

**Y.**

**YEAR—**informations to be laid within one, 204  
fractional part of, in error of age, 255



# APPENDIX D

## TO HUNTER'S INSURANCE CORPORATIONS ACT.

*The amending Act of 1893 (56 Vic. c. 33).*

NOTE.—Spare copies of this Act (arranged, as below, for convenient insertion in Hunter's Insurance Corporations Act) can be had of the Carswell Co., (Ltd.), 30 Adelaide St. E., Toronto. Price ten cents each.

*This Amending Act, "Appendix D," printed on one side only that its sections may be cut out and placed opposite the clauses amended.*

Interpreta-  
tion: Con-  
struction  
generally.

57

(2) The expression "trade or labour union or organization" means such an organization of wage-earners of a particular trade or industrial calling, as is primarily constituted and is actually operated *bona fide* for the regulation of the wages and hours of labour as between employers and the employed; but shall not be deemed to include co-operative associations or societies. [56 V. c. 32, s. 1 (2).]

"Trade or  
labour  
union or  
organisa-  
tion."

**WORKMEN—**

collective policies against accident, 52  
organizations of, when exempt from Act, 154

**WOUND—**

meaning of, 242

**WRITTEN—**

meaning of, 32  
words control printed ones, 32

BIBLIOTHEQUE DE DROIT

LAW LIBRARY

## APPENDIX D

### TO HUNTER'S INSURANCE CORPORATIONS ACT.

*The amending Act of 1893 (56 Vic. c. 32).*

NOTE.—Spare copies of this Act (arranged, as below, for convenient insertion in Hunter's Insurance Corporations Act) can be had of the Carswell Co., (Ltd.), 30 Adelaide St. E., Toronto. Price ten cents each.

56 VICTORIA CHAPTER 32 (Ont.)

(Assented to 27th May, 1893.)

### An Act respecting the Insurance Law.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

9        **I.**—(1) This Act shall be read and construed as one Interpretation: Construction generally.  
with *The Insurance Corporations' Act, 1892*, hereinafter  
called "The Principal Act." [56 V. c. 32, s. 1 (1).]

57        (2) The expression "trade or labour union or organiza- "Trade or labour union or organization."  
tion" means such an organization of wage-earners of a  
particular trade or industrial calling, as is primarily consti-  
tuted and is actually operated *bona fide* for the regulation  
of the wages and hours of labour as between employers and  
the employed; but shall not be deemed to include co-oper-  
ative associations or societies. [56 V. c. 32, s. 1 (2).]

BIBLIOTHEQUE DE DROIT

LAW LIBRARY

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84

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17

128

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page

57

(3) The expression "insurance fund" or "insurance funds" shall not be deemed to include any fund or funds of <sup>"insurance fund" or "funds."</sup> a trade or labour union or organization appropriated to or applicable for the voluntary assistance of wage-earners unemployed or upon strike. [56 V. c. 32, s. 1 (3).]

58

"Endowment insurance."

(4) "Endowment insurance" includes any contract of insurance which contains an undertaking to pay an ascertained or ascertainable sum at a fixed future date, provided the assured is then alive. [56 V. c. 32, s. 1 (4).]

11

(5) The word "lodge" includes a primary division (by "Lodge," whatever name known) of a friendly society. [56 V. c. 32, s. 1 (5).]

128

Foreign friendly societies: incorporation of Provincial body.

**2.—**(1) Where a friendly society, registered under The Principal Act, has its head office elsewhere than in the Province of Ontario, the Grand or other Provincial body, or the lodges or a majority of the lodges situated in the Province may file with the Registrar of Friendly Societies an application or applications for Provincial incorporation, setting forth the facts of the case and the proposed corporate name, and head office and rules of the society; also naming those persons who are to be its first trustees or managing officers, and stating the mode in which their successors are to be elected; also furnishing such other information as the Registrar requires. [56 V. c. 32, s. 2 (1).]

BIBLIOTHÈQUE DE DROIT

11  
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LAW LIBRARY

10  
11

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12

to face  
page:

128

Hearing of  
applica-  
tion and  
notice.

(2) Upon due application made the Registrar may name a day for the hearing of the application, and such public notice of the hearing shall be given in the *Ontario Gazette* and otherwise as the Registrar shall direct. [56 V. c. 32, s. 2 (2).]

128

Certificate  
of incor-  
poration.

(3) If upon the hearing it appears to the Registrar in his discretion that such incorporation ought to be granted, he shall have authority to certify in duplicate, or in as many parts as may be required, under his hand and the seal of his office that he finds entitled to incorporation under the name and for the purposes specified in the certificate, the persons mentioned therein. [56 V. c. 32, s. 2 (3).]

128

Filing of  
certificate.

(4) One of the original parts of the certificate shall be filed in the office of the Provincial Registrar, together with such other documents as the Registrar of Friendly Societies shall by his certificate require to be filed; and from the day of such filing the persons mentioned in the Registrar's certificate and their associates and successors shall thenceforward be a body corporate and politic, and shall have the powers, rights and immunities vested by law in such bodies;

Provided.

Provided every body so incorporated shall forfeit its corporate powers by non-user as provided by section 1 of the *Act respecting Benevolent, Provident and other Societies* as amended by section 63 of The Principal Act, and shall be liable to have its corporate powers suspended or revoked as provided by section 10 of the Act passed in the 53rd year of Her Majesty's reign and chaptered 39. [56 V. c. 32, s. 2 (4).]

BIBLIOTHÈQUE DE DROIT

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C

LAW LIBRARY



Registra-  
tion.

(5) Upon due application the Registrar of Friendly Societies shall have authority to admit to registry as a friendly society the body so incorporated. [56 V. c. 32, s. 2 (5).]

Incorpora-  
tion of  
auxiliary  
bodies.

3. Where it is in the opinion of the Registrar of Friendly Societies necessary or expedient that an auxiliary, or local or subordinate body or branch of a registered society should be separately incorporated, or separately registered, or both, or that two or more Societies should be incorporated or registered as one Society, the Registrar may direct the like proceedings to be taken as in the next preceding section enacted, and the filing of his certificate in the office of the Provincial Registrar shall have the same effect as therein enacted; also upon due application the Registrar of Friendly Societies shall have authority to admit to registry the body so incorporated. [56 V. c. 32, s. 3.]

Registra-  
tion.

Incorpora-  
tion of sub-  
ordinate  
lodges.

4.—(1) Any unincorporated lodge or body controlled by a registered society, and operated under the uniform rules prescribed by the said society, and not contrary to law may, through the society, make application to the Registrar of Friendly Societies for incorporation; if upon due application it appears to him that incorporation ought to be granted, he may certify the same under his hand and the seal of his office; and the filing of his certificate in the office of the Provincial Registrar shall have the same effect, and be subject to the same limitations as enacted in sub-section 4 of section 2. [56 V. c. 32, s. 4 (1).]

BIBLIOTHEQUE DE DROIT

11

C

LAW LIBRARY

To face  
page:

128

Dissolu-  
tion of the  
corpora-  
tion.

(2) If the registered society should at any time revoke the warrant or charter under which the body so incorporated is operated, such revocation shall be certified in duplicate by the presiding officer and the secretary of the society under the seal thereof; one of the said duplicates shall be filed with the Registrar of Friendly Societies, the other with the Provincial Registrar; and this certificate from the filing thereof in the office of the Provincial Registrar, shall *ipso facto* operate to dissolve the body so incorporated, and to vest the property, assets, funds and effects of the said body in the presiding officer and the secretary of the registered society and their successors in office as trustees for the creditors and persons beneficially entitled; and the surplus (if any), after the liabilities are satisfied, shall vest in the registered society to its own use absolutely. [56 V. c. 32, s. 4 (2).]

Disposal of  
assets.

128

Super-  
annuation  
or benefit  
funds  
under 15 V.  
c. 42, or  
Rev. Sta.  
c. 145, s. 48.

5. The officers of any superannuation or benefit fund authorized by sub-section 7 of section 504 of *The Consolidated Municipal Act, 1892*, or by sub-section 12 of section 496 thereof, or established by virtue of any prior or amending municipal Act, or by virtue of any Act authorizing the establishment of a benefit fund for policemen or firemen, and the officers of any benefit fund established by virtue of section 48 of chapter 145 of the *Revised Statutes, 1887*, may, upon like proceedings taken as enacted in section 2 hereof, become incorporated with the same limitations of corporate powers; and the body so incorporated may, upon due application, be admitted to registry. [56 V. c. 32, s. 5.]

BIBLIOTHEQUE DE DROIT

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Unincor-  
porated  
societies  
entitled at  
10th March  
1890.

6. Where a friendly society has its head office in Ontario and the society or the lodges of the society were, on the tenth day of March, 1890, and also on the thirty-first day of December, 1892, in actual and active operation, and though the society, being at the first-mentioned date entitled to incorporation, did not on or before that date, take out incorporation, the Registrar of Friendly Societies, upon proof of the facts, shall, in his discretion, have authority to issue a certificate of incorporation as in section 2 hereof enacted, and the filing of this certificate in the office of the Provincial Registrar shall have the same effect and be subject to the same limitations as therein provided; upon due application the Registrar of Friendly Societies shall, in his discretion, have authority to admit to registry the society so incorporated. [56 V. c. 32, s. 6.]

7. Section 12 of *The Act to secure to Wives and Children the Benefit of Life Insurance* is amended by adding the following as sub-section 2:—

Rev. Stat.  
c. 136, s. 12  
amended.

(2) Where it appears upon the letters of guardianship or other like document issued or to be issued by a court beyond the jurisdiction of the Province, or by a certificate of the Judge under the seal of such court, that it has been shown to the satisfaction of such court that the deceased at his death was domiciled or resident within its jurisdiction, and where security to the satisfaction of the court has been given by the guardian or other like officer appointed by the said letters or document, then the High Court, upon application for the appointment of the said guardian or like officer as trustee under this section, may dispense with the giving of security, provided it has been also shown that the infants reside within the jurisdiction

Where  
guardians  
appointed  
by foreign  
court.

BIBLIOTHÈQUE DE DROIT

11-2

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LAW LIBRARY

of the foreign court, and that the proposed trustee is a fit and proper person, and that the security has, in accordance with the practice of such foreign court, been given in respect of and for the due application and account of the money payable under the policy. [56 V. c. 32, s. 7.]

64

53 Vic.  
c. 33, sec. 6,  
amended.

8.—(1) Sub-section 1 of section 6 of the last-mentioned Act as the same is amended by section 6 of the Act passed in the 53rd year of Her Majesty's reign and chaptered 39, is amended by inserting after the words "one or more of them," in the sixth line thereof, the following words: "or to the mother of the assured as a beneficiary or sole beneficiary"; and the said section is further amended by adding at the end thereof the following words: "or for the benefit of any one or more of the above-mentioned persons for life, and, after his or their decease, for the benefit of any one or more of the survivors." [56 V. c. 32, s. 8 (1).]

64

53 V. c. 39,  
s. 5, amended.  
ed.

(2) Section 5 of the said Act is amended by striking out in the fifth and sixth lines thereof the following words: "and may, as in the said section provided, vary the apportionment." [56 V. c. 32, s. 8 (2).]

Rev. Stat.  
c. 167,  
amended.

9. *The Ontario Insurance Act* is hereby amended as follows:—

Rev. Stat.  
c. 167, s. 107,  
amended.

(1) Section 107 is amended by striking out all the words down to and inclusive of the word "period" in the second line, and inserting the following words in lieu thereof: "Any contract that may be made for one year or any shorter period on the mutual system, or for three years or

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any shorter period on the cash system"; the said section is further amended by striking out the word "his" in the fourth line and inserting in lieu thereof the words "a new"; and is further amended by inserting after the words "cash payments" in the fifth line the words: "or premium notes." [56 V. c. 32, s. 9 (1).]

Rev. Stat.  
c. 167, s. 122,  
sub-s. 2,  
amended.

(2) Sub-section 2 of section 122 as enacted by section 1 of the Act passed in the 53rd year of Her Majesty's reign and chaptered 44, is amended by adding at the end of the said sub-section the following words: "but the notice required by section 133 of this Act to be embodied in or endorsed upon the premium note shall not be deemed to be 'other matter' within the meaning of this sub-section." [56 V. c. 32, s. 9 (2).]

Rev. Stat.  
c. 167, s. 23,  
amended.

(3) Section 123 is amended by striking out the word "fifty," in the fifth line and inserting in lieu thereof the word "sixty." [56 V. c. 32, s. 9 (3).]

Rev. Stat.  
c. 167, s. 80,  
amended.

"(4) Section 80 is amended by inserting after the word "officer" in the first line, the following words: "or the banker of the company." [56 V. c. 32, s. 9 (4).]

55 V. c. 39,  
s. 2, sub-s. 8  
amended.

**10. The Principal Act is amended as follows:—**

(1) Sub-section 8 of section 2 is amended by adding thereto the following proviso:—

Contracts  
to be  
deemed  
made in  
Ontario.

"Provided that when the subject matter of the contract is property or an insurable interest within the jurisdiction of Ontario, or is a person domiciled or resident therein, any policy, certificate, interim receipt, or writing evidencing the contract shall, if signed, countersigned, issued or

BIBLIOTHEQUE DE DROIT

II

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delivered over in Ontario, be deemed to evidence a contract made therein, and the contract shall be construed according to the law thereof; and this proviso shall have effect notwithstanding any agreement, condition or stipulation to the contrary." [56 V. c. 32, s. 10 (1).]

64

55 V. c. 39,  
s. 2, sub-s.  
16, amend-  
ed.

(2) Sub-section 16 of section 2 is amended by inserting after the words "friendly society" in the seventh line the following words: "not undertaking endowment insurance or annuities." [56 V. c. 32, s. 10 (2).]

163

Likewise sub-section 2 of section 10 is amended by inserting after the word "society" at the end of the first line the following words, "not undertaking endowment insurance or annuities." [56 V. c. 32, s. 10 (2).]

70

55 V. c. 39,  
s. 3, amend-  
ed.

(3) Section 3 is amended by adding thereto the following proviso:

Civil ser-  
vice fund  
of Canada.

"Provided that no superannuation or insurance or annuity fund, managed or controlled by the Government of the Dominion of Canada for the benefit of the Civil Service thereof shall require to be registered." [56 V. c. 32, s. 10 (3).]

89

(4) Clause B of sub-section 2 of section 4 is amended by adding at the end thereof the following proviso:—

55 V. c. 39, s.  
4, sub-s. 2B  
amended.

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“ Provided also, in any case of doubt where the *bona fide* intention of a society is to afford charitable aid or relief, and not to create either any contractual right in the members or any contractual obligation against the society, upon the society making such intention apparent in its rules and publications (by such amendment, if necessary, as the Registrar shall direct), the Registrar may by writing, under his hand and seal of his office declare the organization exempt from the operation of this Act, and such certificate shall remain valid until by like writing revoked, and the society so exempted shall not be subject to any penalty imposed by this Act.” [56 V. c. 32, s. 10 (4).]

Societies  
for chari-  
table pur-  
poses only.

08

55 V. c. 39,  
s. 6 amend-  
ed.

(5) Section 6 is amended by adding thereto sub-sections 4 and 5 as follows:—

R. S. C.  
c. 124.

“(4) Corporations, companies or insurers within the intent of sections 3 (a), 49 (4), or 32 of *The Insurance Act of Canada*, may, upon due application, be admitted to registry.

08

Lloyd's.

(5) Upon due application of any underwriter of the establishment or society known as Lloyd's, and more particularly described in an Act passed by the Parliament of the United Kingdom in the thirty-fourth and thirty-fifth years of Her Majesty's reign, and chaptered 21, or upon due application of any such underwriter's broker, or broker's agent, the said establishment or society may for the undertaking and transaction of marine insurance be registered under

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II

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the general name of Lloyd's, which shall include the corporation, all underwriters of Lloyd's for the time being and their brokers, and the agents in Ontario of the corporation or of the underwriters or brokers. In any action or preceeding against the corporation, or against any underwriter, or broker, or agent as aforesaid, for liabilities incurred in Ontario the Inspector of Insurance may receive and accept service of process; and acceptance of service in writing under his hand shall to all intents and purposes whatsoever be legal and binding upon the corporation, underwriter, broker or agent.

08

Term of  
Registry.

For purposes of this and the next preceding subsection the term of annual registry shall commence and end at the respective dates hereinafter prescribed in the case of insurance licensees of the Dominion of Canada. [56 V. c. 32, s. 10 (5).]

40

55 V. c. 39,  
s. 5,  
amended.

(6) Section 8 is hereby amended by adding thereto sub-section 3 as follows:—

Head  
offices of  
Ontario  
societies.

- (3) No society applying for registry or renewal of registry by virtue of its incorporation under any Act of Ontario shall be deemed to be entitled to be registered unless its head-office is situated and maintained in Ontario, and unless the presiding officer, the secretary and the treasurer are *bona fide* residents of the Province. This sub-section shall take effect on, from and after the 1st day of January, 1895. [56 V. c. 32, s. 10 (6).]

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II

C

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(7) The proviso to sub-section 3 of section 9 is amended <sup>55 V. c. 39,  
s. 9, sub-s. 3,  
amended.</sup> by striking out all the words after the word "any" in the first line down to and including the word "members" in the third line, and inserting in lieu thereof the following words:—"bona fide trade union or labor organization," and section 9 is further amended by adding thereto sub-section 5 as follows:—

"(5) Any association of the civil servants or em- <sup>Civil ser-  
vice associ-  
ations.</sup> ployees of the Dominion of Canada, incorporated by virtue of an Act of the Parliament of Canada may, upon due application be admitted to registry." [56 V. c. 32, s. 10 (7).]

(8) Sub-section 1 of section 25 of The Principal Act is <sup>55 V. c. 39,  
s. 25, sub-s.  
1, amended</sup> amended by striking out the word "Registrar" wherever it occurs and substituting therefor the words "Registry Officer"; the said sub-section is further amended by inserting after "purpose" in the third line the words "is insolvent, or is on the verge of insolvency." [56 V. c. 32, s. 10 (8).]

(9) Sub-section 4 of section 30 of the Principal Act is <sup>55 V. c. 39,  
s. 30, sub-s.  
4, amended</sup> amended by striking out the word "or" in the first line and inserting the word "for" in lieu thereof. [56 V. c. 32, s. 10 (9).]

<sup>55 V. c. 33,  
s. 34, sub-s.  
2, amended</sup> (10) Sub-section 2 of section 34 is amended by inserting, in the second line after the words "shewn in," the words "or deduced from"; also, by striking out in the third line the word "table," and inserting in lieu thereof the word "tables." [56 V. c. 32, s. 10 (10).]

BIBLIOTHEQUE DE DROIT

11-2

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(11) Sub-section 5 of section 35 is amended by adding thereto the following proviso :—

55 V. c. 30,  
35, sub-s. 5,  
amended.

" Provided that, instead of printing the matter required by this sub-section, the company may with the consent in writing of the Inspector of Insurance print or stamp the following words in lieu thereof :—' Any insurance undertaken or offered to be undertaken in the Province of Ontario in respect of the lives of children under ten years of age is subject to the restrictions enacted by sub-sections 1 to 5 (inclusive) of section 35 of *The Insurance Corporations Act, 1892*.' " [56 V. c. 32, s. 10 (11).]

55 V. c. 39,  
s. 35,  
amended.

(12) Section 35 is further amended by adding thereto sub-sections 8 and 9 as follows :—

Days of  
grace.

(8) Where the money payable by way of premiums, dues or assessments, not being the initial premiums, dues or assessments, under any contract of life insurance whatsoever is in default, and the event upon the happening of which the insurance money becomes payable has not yet happened, any of the persons hereinafter mentioned may within thirty days after the default, post by registered letter, or otherwise pay, deliver or tender to the company at its head office, or at its chief agency in Ontario, or to the company's collector or authorized agent the sum in default, and also a further sum by way of fine if the contract of insurance by express terms so requires, such fine however in no case to exceed the rate of five cents per week per

BIBLIOTHEQUE DE DROIT

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26

\$1,000 of insurance for each complete week elapsed since the default, and not more in any case than at the rate of twenty cents per \$1,000 for the whole period of default. On payment, delivery or tender, as aforesaid by the assured, or by any of the beneficiaries under the contract, the contract shall be deemed to have been *ipso facto* revived or renewed, and any stipulation or agreement to the contrary shall as against the assured or his beneficiaries be utterly void. The thirty days hereinbefore mentioned shall run concurrently with the period of grace or credit (if any) allowed by the insurer for the payment of a premium or of an instalment of premium; and nothing herein contained shall be deemed to extend the period of grace or credit beyond the total of thirty days. This sub-section shall not be deemed to extend the time allowed for the payment of contributions or assessments by section 40 of this Act.

- (9) Notwithstanding any stipulation or agreement to the contrary, any action or proceeding against the insurer for the recovery of any claim under or by virtue of a contract of life insurance may be commenced at any time within the term of one year next after the happening of the event insured against; or within the further term of six months, by leave of a Judge of the High Court, upon its being shown to his satisfaction that there was a reasonable excuse for not commencing the action or proceeding, within the first-mentioned term. [56 V. c. 32, s. 10 (12).]

BIBLIOTHEQUE DE DROIT

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To face  
page:

283

(13) Sub-section 8 of section 38 is amended by adding thereto the following proviso:—

55 V. c. 39  
s. 38, sub-  
8, amended

“Provided that in the case of railways (including therein other common carriers) desiring their ticket-agents to issue, in behalf of a registered insurance corporation, life or accident insurance contracts for terms not exceeding thirty-one days, the railway may upon due application be admitted to registry for purposes of such contracts only; and shall in respect of such registry pay to the Provincial Treasurer such commuted fee as the Inspector of Insurance shall in writing under his hand certify to the Provincial Treasurer to be in his opinion just and reasonable; the ticket-agents of the registered railway shall, but only for purposes of the said contracts, be deemed to be severally registered within the meaning of this Act for the term of the certificate of registry issued to the railway.” [56 V. c. 32, s. 10 (13).]

Accident  
insurance  
tickets.

321

(14) Sub-section 1 of section 47 is amended by striking out the words “or of section 10” in the third line, and inserting the words “or of sections 9 or 10” in lieu thereof. [56 V. c. 32, s. 10 (14).]

55 V. c. 39,  
s. 47, sub-s.

335

(15) Sub-section 2 of section 51 is repealed and the following substituted therefor:—

55 V. c. 39,  
s. 51, sub-s.  
2, amended

“(2) No appeal shall be allowed unless notice thereof in writing is given to the Registry officer.

Appeals  
from  
registry  
officer.

BIBLIOTHEQUE DE DROIT

II

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54

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Officer within two months after the judgment complained of; nor unless, within three months after the judgment complained of, the appellant gives proper security as aforesaid that he will effectually prosecute his appeal, and pay such costs and damages as may be awarded in case the judgment appealed from is in whole or in part affirmed. At least ten days' notice of any subsequent proceeding on the appeal shall be given in writing to the Registry Officer at his office. [56 V. c. 32, s. 10 (15).]

354

55 V. c. 39,  
s. 62,  
amended.

(16) Section 62 is amended by inserting after sub-division 2 of Division II. the following proviso:—

Ocean  
marine  
insurance.

“ Provided that in the case of corporations, companies, insurers or underwriters undertaking or transacting ocean marine insurance only, and also in case of corporations, companies, insurers and underwriters within the intent of sections 3 (a) or 49 (4) or 32 of *The Insurance Act of Canada* found admissible to registry under this Act, the fee for certificate of registry, whether original or renewed, shall be \$10. [56 V. c. 32, s. 10 (16).]

R. S. C.  
c. 124.

355

Section 62 is further amended by inserting in the fourth line of Division III. after the words “ shall be ” the following words:—“ in respect of powers of attorney as enacted in sub-division 1 of Division II., and in other respects shall be.”

55 V. c. 39,  
s. 62  
amended.

355

Section 62 is further amended by inserting after the word “ with ” in the fifth line of Division IV. these words “ or issued by the.”

55 V. c. 39,  
s. 62  
further  
amended.

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5 . Section 62 is further amended by adding at the end of <sup>55 V. c. 30,</sup>  
Division IV. the following words:—"Certificate of exemp- <sup>s. 62</sup>  
tion from registry, \$1.00; filing of certificate of incorpora- <sup>further</sup>  
tion or any other separate document required by this Act <sup>amended.</sup>  
to be filed in the office of the Provincial Registrar, \$1.00."  
[56 V. c. 32, s. 10 (16).]

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